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ABSTRACT

The purpose of this monograph, which is aimed at educational planners, is to explain the essential aspects of the relationship between planning and law. It is intended to illustrate the role of law in the planning and administration of school systems and thus familiarize education specialists with the tools needed to understand legal administration rules for school systems. It presents its points using the French situation as a model, which is representative of a sociopolitical system where law plays an exceptional role in the field of education, including higher education, reflected both in the sheer amount of legislation and its judicial interpretation and in the influence the legislation exerts. Several topical themes--including decentralization, decision-making procedures, administrative organization, contractual procedures, and conflict resolution--are discussed in detail. Chapter titles reveal the monograph's primary areas of focus: (1) "Preliminary Definitions: Planning, Administration, Legal Aspects"; (2) "Why a Legal Framework?"; (3) "Legally Determining the Competent Authorities"; (4) "Legally Determining Planning and Administration Instruments"; (5) "Legally Determining Basic Rules"; and (6) "Legally Determining Planning and Administration Procedures." (WFA)

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Fundamentals of Educational Planning

ED 480 274

The legal aspects of educational planning and administration

Claude Durand-Prinborgne

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The legal aspects of educational planning and administration

Claude Durand-Prinborgne

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Fundamentals of educational planning

The booklets in this series are written primarily for two types of clientele: those engaged in educational planning and administration, in developing as well as developed countries; and others, less specialized, such as senior government officials and policy-makers who seek a more general understanding of educational planning and of how it is related to overall national development. They are intended to be of use either for private study or in formal training programmes.

Since this series was launched in 1967 practices and concepts of educational planning have undergone substantial change. Many of the assumptions which underlay earlier attempts to rationalize the process of educational development have been criticized or abandoned. Even if rigid mandatory centralized planning has now clearly proven to be inappropriate, this does not mean that all forms of planning have been dispensed with. On the contrary, the need for collecting data, evaluating the efficiency of existing programmes, undertaking a wide range of studies, exploring the future and fostering broad debate on these bases to guide educational policy and decision-making has become even more acute than before. One cannot make sensible policy choices without assessing the present situation, specifying the goals to be reached, marshalling the means to attain them and monitoring what has been accomplished. Hence planning is also a way to organize learning: by mapping, targeting, acting and correcting.

The scope of educational planning has been broadened. In addition to the formal system of education, it is now applied to all other important educational efforts in non-formal settings. Attention to the growth and expansion of education systems is being complemented and sometimes even replaced by a growing concern for the quality of the entire educational process and for the control of its results. Finally, planners and administrators have become more and more aware of the importance of implementation strategies and of the role of different regulatory mechanisms in this respect: the choice of financing methods, the examination and certification procedures or various other regulation and incentive structures. The concern of planners is twofold: to reach a better understanding of the validity of education in its own empirically observed specific dimensions and to help in defining appropriate strategies for change.

The purpose of these booklets includes monitoring the evolution and change in educational policies and their effect upon educational planning requirements; highlighting current issues of educational planning and analyzing them in the context of their historical and societal setting; and disseminating methodologies of planning which can be applied in the context of both the developed and the developing countries.

For policy-making and planning, vicarious experience is a potent source of learning: the problems others face, the objectives they seek, the routes they try, the results they arrive at and the unintended results they produce are worth analysis.

In order to help the Institute identify the real up-to-date issues in educational planning and policy-making in different parts of the world, an Editorial Board has been appointed, composed of two general editors and associate editors from different regions, all professionals of high repute in their own field. At the first meeting of this new Editorial Board in January 1990, its members identified key topics to be covered in the coming issues under the following headings:

1. Education and development.
2. Equity considerations.
3. Quality of education.
4. Structure, administration and management of education.
5. Curriculum.
6. Cost and financing of education.
7. Planning techniques and approaches.
8. Information systems, monitoring and evaluation.

Each heading is covered by one or two associate editors.

The series has been carefully planned but no attempt has been made to avoid differences or even contradictions in the views expressed by the authors. The Institute itself does not wish to impose any official doctrine. Thus, while the views are the responsibility of the authors and may not always be shared by UNESCO or the IIEP, they warrant attention in the international forum of ideas. Indeed, one of the purposes of this series is to reflect a diversity of experience and opinions by giving different authors from a wide range of backgrounds and disciplines the opportunity of expressing their views on changing theories and practices in educational planning.

This booklet deals with the legal aspects of educational planning. Basing his study in part on the French system - a consummate example of statute law - the author develops the essential aspects of the legal framework governing education, and provides educational planners with an analytical frame of reference showing the role that law plays in the planning process for education systems.

Far from consisting of mere social regulations imposed by the political authorities, this framework offers planners invaluable instruments for attaining objectives, once they correctly perceive the way administrative rules are organized, and the responsibility of each player within the system. By analyzing the legal framework of school systems, this work draws attention to the importance of legal provisions - whether they have grown out of national traditions or international conventions - through an accurate identification of the elements that constitute the educational planning process, on the one hand, and an in-depth study of the relation between law and the instruments, key players, basic rules and procedures of educational planning, on the other.

Professor Emeritus at the University of Paris I Panthéon-Sorbonne, Claude Durand-Prinborgne is one of the leading specialists on education law, about which he has published numerous works. The IIEP would like to express its profound gratitude for his willingness to share his knowledge with the readers of the *Fundamentals of educational planning* series.

Gudmund Hernes
Director, IIEP

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Preface

The implementation of educational reform, as well as its continuity, is expressed in terms of law, rules and various directives. Therefore, careful attention must be paid to the drawing up of legislation, and, subsequently, to its application. These aspects are often overlooked when writing about educational planning and the formulation of educational policies.

Legislation provides a set of instruments that planners and decision-makers can use either to implement their policies (laws on compulsory education, laws that oblige businesses to finance vocational training through deductions on wages), or to influence the behaviour of the various players and to incite them to take various measures (e.g. contracts relevant to a long-term plan). However, it must be used and not abused. Too many laws undermine the law, as the author of this monograph so often points out. In some countries, legislative provisions are so numerous and detailed that no-one can really respect them. Nor do people have the means of enforcing them: this is the case for laws on compulsory education in some developing countries, where neither the state, nor the community, nor families have the requisite financial resources.

As much as they are instruments for supporting policy, laws are also constraints that the planner must respect. These constraints can arise from international conventions that the country is signatory to, from the Constitution, or from regulations laid down by a higher court. Thus, the articles of the Constitution of certain countries, concerned with freedom of education or the respect of the principle of non-discrimination, are facts that must be taken into consideration by education decision-makers and planners. Similar articles in the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations, and more recently the Convention on the Rights of the Child, are perhaps less imperative, but they are nevertheless significant for ethical reasons. At a lower legislative level, the status of teachers and their responsibilities are also elements that planners and administrators must take into account, even if, in principle, it is always possible to change them by passing new laws.

In this monograph, Claude Durand-Prinborgne demonstrates the importance of a legal framework for educational planning and administration. He reminds us of the various types of legal provisions that make up the legal framework of educational policy, from constitutions and international conventions at the highest level, down to decrees and case law. A certain number of basic principles and laws exist that must be understood, such as the 'order of authority' according to which a lower decree cannot contradict a higher law, which in turn cannot contradict the constitution; respect for the law ('ignorance of the law is no excuse'); and accountability. He explores various areas covered by school law which will directly interest planners, such as the determination of responsibility, tools and planning procedures.

Several recurrent themes on educational planning are thus analyzed from a legal point of view. The implementation of decentralization is an area of particular importance in education legislation. The modernization of the role of the state - which is less and less a sole player, but increasingly involved in partnerships with the regions, communities, etc, and which sets aims and seeks to guide and inspire, rather than dictate over-detailed solutions - necessitates the development of new legal tools. These new provisions, which take the form of contracts relevant to a long-term plan, local education contracts, and even individual school projects, are particularly interesting from this point of view.

The primacy of law also implies the notion of controlling and resolving conflicts: who holds this authority and to what degree? What types of recourse are open to citizens, parents, students, teachers in the face of a school administration? How can conflicts be foreseen and prevented? These questions are increasingly important for any democracy.

This monograph is the second that the Institute has published on school law. The first monograph, written by Ian Birch, presented the case of countries within the common law tradition. This one presents the situation of countries under statute law of which France provides a good example, without being - far from it - the only example. Statute law is also important in Germanic countries, as well as in Eastern European and Latin American countries.

Claude Durand-Prinborgne, Professor Emeritus at the University of Paris I, former Director of Education, and former General Director of Schools in the French Department of Education, is highly knowledgeable about all of the legal aspects relevant to the implementation of education policies. With a wealth of books and articles on educational law to his credit, he is especially well-placed to write this monograph on the legal aspects of educational planning and administration. The editorial committee of this collection is very honoured that he accepted to write this monograph, which will interest all planners and decision-makers anxious to lay the foundations of durable educational policy.

Françoise Caillods
Co-General Editor

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Introduction

This study is intended to illustrate the role of law in the planning and administration of school systems. It does so referring mainly to the French situation, the latter being representative of a socio-political system characterized by the exceptional role of law in the area of education – including universities – both by the amount of legislation and its judicial interpretation, and by its influence. The sheer mass of legislation can have drawbacks, even if this can be explained by a long history of state intervention. It can be bothersome both for those to whom it applies, and for administrators. In education, there is a constant temptation to accumulate legislation in order to improve the school system or adjust to change; however, one can also conclude that "too many laws undermine the law", as the value of rules becomes diluted and sincere misunderstandings spread through ignorance. Serious attention must be paid to the appropriateness of new legislation and its wording. Next, it should be noted that in the classical opposition – sometimes oversimplified and exaggerated – between common law countries and statute law countries (or those with a Latin legal tradition, in contrast to those with a legal tradition based on custom), France is a very mature example of the latter system. All the same, the French case is taken here as an example in the sense of an illustration, and should not be considered as exemplary, in the sense of a model. It interests us insofar as its examination and presentation make it possible first to discern vital issues, then to theorize about educational planning and administration problems, and, finally, to envisage methods for analyzing them and developing solutions, including their legal expression and the effects thereof.

It is no doubt customary and natural to draw attention to the fact that educational systems and their legal frameworks are dependent on history, culture and the socio-economic environment. This has long justified the indifference that national systems feel for other systems, mainly based on the conviction that experience gained *elsewhere* could never be appropriate *here* in terms of results or legal solutions. This is to overlook the nature of the major problems that must be resolved by public authorities when organizing an educational system. Differing political-juridical traditions take similar approaches in their use of law, even when national circumstances are widely divergent. Thus, although there may exist an undeniable gap in the conditions of education between Western European countries and North African or sub-Saharan African states, numerous similarities also exist in terms of legal approach and treatment: from the common setting in legal terms of aims and objectives assigned to education in order to achieve socio-economic goals, to regulations covering family obligations or rights! In today's global society, two factors increasingly contribute to bringing laws introduced within national education systems closer together. The first factor is the identification of concrete problems to be solved. This is the case within the European legal sphere – i.e. the European Union – in the fight against illiteracy, the elimination of school violence, and more specifically, in questions concerning secularism in schools and to what degree religious values should be taken into account. The second factor is consistency with common educational solutions as set down in principle by prevailing international legislation; for example, in affirming the individual's right to education, the responsibility of the state, the role of parents, or the principle of non-discrimination (Article 26 of the Universal Declaration of Human Rights of 10 December 1948; Article 13 of the International Covenant on Economic, Social and Cultural rights; Articles 28 and 29 of the Convention on the Rights of the Child; Article 17 of the African Charter on Human and People's Rights). Nor can one forget UNESCO's role in the area of education. All in all, the classic north-south dichotomy, which is extremely important in observing educational realities – and dramatic for developing countries – does not mean that an analysis of the legal aspects of education in these countries is not relevant.

We will not attempt here to present the legal aspects of planning and administration in common law countries from the Anglo-Saxon tradition, although the problems and solutions are not so different from those in the so-called statute law countries. The Latin-based statute law system applies to most Western European countries, numerous Latin American countries, and also many African countries;

and also largely includes Germanic and Eastern European countries, the latter of which are bringing their schools (and universities) into line with Western European structures, either through a renewal with their Latin roots (the case of Romania) or under the influence of Germany and its 19th century institutions.

The purpose of this booklet, which is aimed at educational planners, is to explain the essential aspects of the relationship between planning and law.

Planners, first of all, cannot ignore the legal constraints resulting from constitutional, legislative or regulatory measures. For example: the obligation of ethnical non-discrimination in the enrolment process, gender equity, compulsory attendance and duration thereof, regulations governing the curriculum, teachers' obligations etc.

On the other hand, law is also a prime tool for planners in attaining objectives. For example, the legal obligation of communities to participate in the financing of educational costs, to assist in school mapping, and to contribute to the struggle against illiteracy is the outcome of the decision to create compulsory education that is controlled and approved by the state (at least for formal education).

A study of these legal aspects presupposes that some explanation should be given of the very terms of the object of study. The subject will not be defined according to an intellectual approach, but rather through looking at its fundamental aspects. This will be undertaken in the first chapter.

Following this, we will examine in a second chapter the fundamental question of "Why is a legal framework needed?". Once this is answered, we will cover the relationship between planning and law by successively examining "how to legally determine the competent authorities" (*Chapter III*), and, once this is done, "how to legally determine planning and administrative instruments" (*Chapter IV*). Then, after having considered *who plans* and *with what instruments*, we next turn to *how* planning is done. This question generates two responses: one concerning "how to legally determine basic rules"

(*Chapter V*), the second concerning methodology for "legally determining planning and administration procedures" (*Chapter VI*).

We would like to stress here that the relationship between planning and law must not be conceived and (or) perceived as something *static*. What we are dealing with here is a *dynamic* relationship which can generate its own variations over time, as well as undergo mutation, for political, economic and social change can modify one *or* the other (or one *and* the other) of the two terms of the equation. Although this point will be examined more fully in *Chapter V*, let us give here three examples of the relationship. Legal provisions recognizing the individual merits of teachers so as to better organize their career plans can be in sharp contradiction with the wish of the planner to develop pedagogical approaches based on collective action (group teaching). This contradiction must be resolved, and this is the first example. Now, in the other direction this time, the effects of a plan on the law: the projected planning of teaching activities can serve to draw up evaluation criteria which could have possible legal repercussions. Finally, a third example, the absence of mandatory provisions limiting repetition or access of older students, contributes to the ageing of the school population, which obliges the planner to calculate apparent and real enrolments, often tinkering with results to conceal reality.

I. Preliminary definitions: planning, administration, legal aspects

Since legal aspects are at the very core of our discussion, we have consciously kept them as the last of these preliminary definitions. Three observations must be made about the other terms before they are examined. The first observation: historically speaking, statute law countries were first and foremost concerned with administering their education systems, with planning being everywhere a much more recent policy phenomenon. This historical development has left important traces. For quite different reasons, which can range from the role of education in building national unity, its role in encouraging economic development, and the insufficiency of resources, developing countries often give priority to the planning of education, especially in spatial terms.

The second observation is that besides the fact that the legal apparatus for planning and administration is quite formidable, the difference between the two functions is more distinct in systems of the French type than it is in the Anglo-Saxon world. No doubt, this is not just the effect of an intellectual obsession with a certain kind of rationality. What is involved is the concept of educational management itself and the procedures that this kind of management requires.

The third observation is the fact that the excessive production of legislation presents both advantages and risks. Although it is far from negligible, we will not dwell on this risk of overwhelming the national education system with boundless aims. Some African countries have not escaped this temptation which springs from a sense of generosity and certain legitimate ambitions, such as widening access to education (education for all) and the wish to promote high-reaching goals. This risk has few legal consequences. On the other hand, it can have political impact due to the increasingly obvious gap between stated aims and reality. The drawing up of legislation, whether by the parliament or government, must be realistic. Apart from this risk, the abundance of law, and especially its exactness, technically carries with it the advantage of determining mutual responsibilities, but also the danger of reducing the capacity for adaptation and innovation. This implies that political decision-makers must be familiar with educational planning and administration problems and that administrators on their side must have an exact and precise knowledge of the law.

Perhaps the idea of 'abundant legal production' should be explained more precisely. This can mean either that there is a large body of legislation, or that there are fewer laws, but that these are very detailed and complex. There is no solution without implications. In fact, free-market forces, which in a liberal democracy govern private activity in the area of education, prove that constraints can be even more onerous with fewer provisions than with many, if the rules are detailed and minutely restrictive.

Planning and administration

It is important to make a clear distinction between the two functions grouped together here: planning and administration. Their common denominator is that they are both subject to law. However, the difference between them appears evident if we see how they apply to a single school. Planning, since it tends to organize the provision of education, includes the institution – whether school, *collège* or *lycée* – as a component in an overall system. Planning is a strict necessity. In fact, the very creation of the school, its mission, and how this is accomplished all depend on planning. Administration, on the other hand, is legally prescribed for the school's administrators, as it is for those who at the national, regional or local level are responsible for leadership, supervision, control, and regulation.

There exist several links between planning and administration. The act of planning is one of the concrete expressions of educational administration, whether by the state, or by one of its constituents (region, *département*, province, etc), administration being understood here in the general sense of educational management. Furthermore, it is the administration – in the sense of an institution with the mission

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of public service, and itself subject to law – that makes planning choices when the law empowers it to do so, or prepares decisions to be taken by the public authorities (government, elected council, local executive committee, etc). The administrative procedure for preparing this decision as well as the decision-making in itself, are defined within a legal framework.

Planning decisions – or choices – once adopted, then provide a framework for the functioning of the educational system, i.e. its administration. Indeed, legislation for planning decisions amounts to a series of constraints for administrators. Thus, in the decentralized scheme that has applied to education in France since the beginning the 1980s, legislation states that planning choices made at the national level are the responsibility of territorial authorities.

Planning

The concept is not as clear at it first appears. In the systems under consideration, it is often understood in a narrower sense than it is in certain international and Anglo-Saxon traditions. This can be partly explained by the clear distinction between planning and administration, even though the former is indisputably an act of administration. Administrative law and practices define planning by a series of *aims* which either fall within the framework of the planning process and are translated into legal measures, or remain as aims that should be adopted, but cannot be because of circumstances (for example, if, when setting up schools in systems where only one child out of four or five would be enrolled during the compulsory education period, the state, due to lack of financing, leaves the field open to private initiatives[1]). The relationship between planning and the law can vary according to aims. A few examples will serve to demonstrate this. Setting educational objectives is part of the logic of planning. This can take the form of a law – this is the case in France of the *Loi d'orientation sur l'éducation* (law governing education) of 10 July 1989 – but there is not a jurist or an educational specialist who does not recognize the actual limits of legal obligations. In the other direction, the legislation of obligatory weekly teaching hours for teachers is a real constraint for the planner when evaluating available means. The kind of planning that generates obligations has five distinct aims.

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[1] Another solution is certainly conceivable: through its decisions, the state could assure the preliminary or even exclusive application of its own priorities.

Determining educational objectives

This is the first aim. This decision is a highly political act. Thus, the expression of objectives can be found, alternatively or cumulatively in the Constitution, in a legal measure, or in a Plan. This decision can fall within the competence of the nation and be the responsibility of Parliament and the Government (France), or be the concern of federated states in a Federal system with limited educational jurisdiction (German Federal Republic), be a community concern (Belgium) or the co-responsibility of the state and the Provinces, as in Spain, etc. In highly **decentralized** developed countries, the general trend is towards increasing state involvement to assure coherence and guarantee the level of education. In strongly **centralized** ones, the trend is towards a transfer of responsibilities to regional and local levels of planning (and administration) in a concern for greater efficiency (capacity of adaptation and innovation) and better management.

Everywhere, the act of determining objectives through legislation raises the same problems. Facing pressure from social groups with legitimate aspirations, it involves a struggle to find the right balance for the education system. The objectives must be clear. They must be known. They must be understood. They must allow for an evaluation of results obtained. They must express a political will that is sufficiently engaged to mobilize and motivate everyone involved. However, if the objectives are too diverse and poorly expressed, those concerned will make their own choices: if the proposed aims are too distant or lofty, they will generate indifference and discouragement among those involved. There are numerous examples of equal opportunity policies – whether social or gender policies – being adopted and then

Box 1: The French National Plan

The National Plan is an example of flexible, four-year planning. It is focused on the overall economic and social life of the nation. Education is generally a part of this, of greater or lesser importance. The Minister or Planning secretariat, the Cabinet and the Parliament are all involved here. The body that prepares the Plan is the *Commissariat général du Plan* (state planning commission).

The first Plan which followed the reform of planning procedures in 1982 was to cover the 1984-1988 period. The 9th Plan, known as the 'economic, social and cultural development plan' gave rise to two laws: one setting the *main goals*, the second, deciding the *means of execution*, in particular through twelve priority programmes. Its execution was affected by the change in the parliamentary majority in March 1986.

Drawing up the 10th Plan for 1989-1992 began by a consultation with members of the government. The Junior Minister for Planning drew up a preliminary draft which was submitted to a dozen commissions, including one called 'Education, Training, Research', made up of representatives from the ministries involved, qualified experts, representatives from labour organizations, parent-teacher associations, business interests, etc. The government examined the suggestions of the commissions and finalized an initial Plan proposal. This was examined by the Economic and Social Council, then approved by the Cabinet in March 1989 and passed by Parliament on 10 July 1989 (Larminat, 1990). This Plan asserts the 'absolute priority' given to the education system. It specified education and training within five

2. The Commission volunteered to continue its work until the end of its mandate (Secrétariat d'État au Plan, 1991).

major areas. The Commission's work was published (Secrétariat auprès du Premier ministre chargé du Plan, 1989[2]).

The preparation of the 11th Plan for 1994-1998 also saw the involvement of an 'Education-Training' group consisting of three workshops. This work was also published (Commissariat général du Plan, 1993). The report presents an analysis of the situation, then a series of ten proposals concerning a number of perceived flaws, factors governing evolution, and a widening of perspectives.[3]

All in all, the major interest in developing a national plan depends both on the *preparation procedure* which opens, more or less amply, a national debate on education and training, and a *determining of goals*, rather than concrete measures to be taken by the competent authorities. In 1994, the report to the Prime Minister by the commission chaired by Alain Minc on the theme 'France in the Year 2000' devoted a mere 17-page chapter to education (Minc, 1994). This can be explained by a shift of priorities from preliminary reflection towards a general law governing education, which sets aims and objectives, as well as by the place taken by contractual policy between the state and the regions, and the legal determination of the ways that state investment can benefit the regions.

contradicted by educational practices, or unrealistic enrolment objectives.

Determining the nature of instruction

This is the second aim of educational planning. It depends on the political choice of objectives. It has a technical aspect: organized curricula, certification, the school calendar, and programmes. However, these amount to a number of political choices concerning the organization of basic education, access to secondary education, and the relation between general education, technical education, and vocational education.

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[3] Reviewed by B. Toulemonde (1993: 541-542).

This aim will largely depend on the resources that are likely to be assigned to the education sector, but, in turn, it will also generate public expenditure. Thus, it assumes increasing quality standards and a capacity for making measured political choices.

Instruction – the expression is understood in its broadest sense, as the general organization of studies and individual learning – is defined by law as: the general organization of the educational system, the curriculum, courses of study, etc. The planner and administrator must adhere to this very strict framework, which offers the advantage of being readily understood by families and (or) students, if the formulation is sound and the wording of the legislation strives for clarity and simplicity. It also gives a guarantee of stability – certainty of the law – to employers, on one hand, who are assured of the consistent value of all diplomas, and the content of courses leading to a diploma; and, on the other hand, to families and students, who are protected from over-rapid changes in the types of courses taught, or even simply in their content. However, if the law is over-meticulous, excessively detailed and too rigid, it can either hinder the adaptation needed to take into account local particularities, or the adaptation to the specific needs of the school-going public (students who are failing, students in immigrant families, handicapped students, psychologically fragile students, etc). Or, more generally, it can reduce the capacity of the school system to adapt to change (continuance of obsolete courses, offer of special courses with no takers, programmes that lag behind the development of scientific knowledge). In July 1999, a symposium organized by the French National Commission for UNESCO and the Centre International d'Études Pedagogiques,[4] in co-operation with UNESCO, for the preparation of the fifth edition of the World Education Report for the year 2000 (UNESCO, 2000) on the theme 'The right to study new subjects in the 21st century' showed how important the ability to change was. It is neither educational aims, nor organizational conditions that are the most affected by economic and social change, but rather the content of education – content in the sense of curriculum, programmes, courses, but also in the sense of transmitted values (tolerance, respect for others, human rights, protection of the environment, the capacity for teamwork, etc) (CIEP, 1999-2000).

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[4] This centre for pedagogical studies is a department under the authority of the French Ministry of Education and is responsible for international co-operation, training of teachers of French, and international conferences on teaching.

Determining the timeframe for the means adopted

This comprises the third possible planning aim. The set of questions concerning these means boil down to a problem of financing, thus to the portion of the Gross Domestic Product allocated to education, the portion of the budget allocated to it, and the ongoing evolution of both. Money provides these means. However, in reality, the financial resources involved are used in three ways, which are legally regulated in various ways, while the financing as a whole is the concern of the education budget or budgetary economics (costs, allocation, social benefits, economic returns, etc). Money pays for equipment, personnel, and covers the operating budgets of the schools.

Equipment is either real estate (buildings, major maintenance activities, etc) or movable property (school furniture, scientific instruments, audio-visual material, machines, tools, etc). **In all systems of educational statute law, the liquidation and acquisition of equipment are subject to a strict set of rules that planners and administrators must be fully aware of.** The latter consist of measures covering three areas: first, *construction* (real estate) or *acquisition* (movable property), then the *allocation of property to education services*, and finally *determining the legal framework* for the property allocated. The rules that apply are, on one hand, those of general administrative law (the procurement of goods and services, for example) and, on the other, specific to educational administration (for example, school security rules, specially adapted school furniture, etc). A familiarity with rules outside of the education system is a must for education planners, especially since the laws governing procurement contracts are becoming increasingly international, first of all, as part of the fight against monopolies and market domination, but also, at a later phase, as part of the fight against corruption related to financing via foreign loans. In a double sense, buildings and material impinge greatly on schooling and the forms it takes; but also, in an inverse manner, educational choices (the size of classes and departments, for example) can determine the volume of equipment. If the availability of financing is a prime concern, and if material possibilities are another (for example constructing in concrete, wood or straw in an African context), the legal procedure governing the ordering procedure, the respect of fair marketing practices, and the adherence to standards of hygiene and security are equally essential.

Teaching and non-teaching *personnel* (administrative and service) who make up human resources will, as was the case of equipment, give rise to certain types of planning problems. Some of these will be of a strictly legal nature, whereas others will be less directly related to the law. On one hand, one must allocate budgets, organize recruitment periods, plan job creation, apportion jobs, deploy personnel, etc, and then manage the personnel. One must also take into account the status of the members of personnel.

In some international comparisons, there is too much of a tendency to exaggerate the importance of these regulations. In fact, neither the employer – whether the state, community, school, private person – nor the legal status of the employee – whether civil servant, public sector employee, or private sector salaried individual – nor the nature of the relationship binding him or her to the employer – labour code, special agreement, signed contract – are in themselves the determining elements of an educational institution's flexibility or lack of it. Although there is occasionally a link between regulations and a lack of flexibility, this is not widespread. The status of civil servant, or even public employee, can offer financial security, and also guarantee the planner or manager a perfect control of initial assignments and eventual transfers. On the other hand, regulated salaries based on the former colonial system impedes the efforts of some countries. Here, it is the regulations themselves that are at fault. Elsewhere, they are satisfactory, but applied under strong union pressure. However, this pressure can have repercussions on private contracts as well. Generally speaking, there is no concrete proof that localism, and the 'private' and contractual nature of the hiring process guarantee quality recruiting (as some recent analyses too readily maintain).

The advantages and drawbacks of various policy formulas must be measured against two criteria: one, the impact of the teacher's legal status on the quality of teaching, and the other, the impact on planning.

The real question is the balance between regulations that are universally inspired by the concern of providing guarantees and advantages for personnel, and those that arise from the concern of assuring educational services. The difficulties and the risks, which unfortunately are not always avoided, are of two types. On one hand, the proliferation of categories introduces a lack of flexibility that is contrary to the needs of an evolving educational system. For instance, the imitation by some developing countries of the strategies of the former colonizer is rife with negative consequences, all the more so since the management rigidities that result from the increasing diversity of organizational status are more onerous for a few thousand employees than when there are hundreds of thousands of them. On the other hand, taken category by category, the definition of service duties and how they should be accomplished have important consequences for the allocation of personnel, the social coverage of employees concerned, and educational resources. In fact, it is very important that the rules governing teachers do not become an obstacle to necessary decisions for adapting the school system, either in terms of the training it provides, or in the geographical distribution of schools.

Box 2: National recruitment programming in France

The Ministry's recruitment programme covers a period of several years. The measure was adopted given the pressing need for, and difficulty in, recruiting teaching personnel (low number of candidates, low scores on the recruitment examinations). For the legislator the purpose was, in keeping with Article 16 of the law of 10 July 1989,[5] to create greater publicity, to go beyond a yearly budgeting framework, and, finally, to allow candidates to prepare themselves for the recruitment examinations.

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[5] "A recruitment plan for personnel is published each year by the Ministry of Education. It covers a period of five years and is revisable annually" (Art. 16 of the law governing education of 10 July 1989).

The interest of these statutory provisions strongly declined with the perceptible increase in candidates for the recruitment examinations and the end of shortage fears.

Incidentally, in an education system where personnel needs, as a budget item, are dependent on national management, the projected management of jobs and recruitment is a very delicate matter. The sheer number of personnel is in itself a prime source of difficulty for management. The latter can be affected by changes in the determination of disciplinary needs based on modifications in programmes or courses. It is complicated by the fact that the juries responsible for the recruitment examinations are independent, and can thus decide not to fill all of the positions available.[6]

As for the **financing**, it presupposes the adherence to provisions concerning public expenditure.

Organization of educational provision in spatial terms

This activity is a fourth possible planning aim. Planning can be undertaken so as **organize the provision of education in spatial terms (i.e. school mapping).**

This function differs (although not in the legal sense), depending on whether, within the framework of compulsory education, the universal enrolment objective is being met, i.e. that enrolments are effective, or whether, on the other hand, the objective is not being met. Moreover, this function does not have the same dimensions in the first of the above-mentioned cases, depending on whether the school demographics are part of a downward trend in enrolments, thus freeing resources in terms of buildings and teaching personnel, or whether, on the contrary, there is an increase in the school-going population.

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[6] Concerning projection management, see ENA (1989).

On the other hand, legal considerations are involved where private schools and families are concerned. Private schools are created and operate according to a principle of freedom – upheld by international law – which can be restricted in the public interest. Political options can take two forms: either to exempt the private sector from planning, which is reserved only for the public sector, since there is public investment in this sector; or, on the contrary, to attempt to plan the overall educational provision, if only to assure the co-ordination of a combined effort to satisfy needs. Planning in spatial terms can either require – or not require – a division according to sector when recruiting for schools. The law will provide either for the freedom of a family to opt for the school of their choice, or, on the contrary, for the obligation for children to attend a particular school. We are confronted again here with the problem of educational demographics and that of the relation between educational 'supply' and 'demand'.

Administration

Planning is a primary act, in the sense of being preliminary to administration. The former prepares the provisions required for intervening within the school system. The latter then administers: the personnel, the premises, the students, teaching activities, certificates, etc.

However, if administration thus appears secondary, planning presupposes, in fact, periodic revisions, which means that a permanent administration and periodic revisions of planning decisions co-exist in temporal terms.

Chronologically, politico-administrative concerns have often preceded planning in the current sense of the word. In France, for example, compulsory education, stipulated by legislation from the last quarter of the 19th century, led to requiring communes to provide primary education (this was formulated, in fact, in 1833) as a part of public service, on the condition that parents comply with the obligation of educating their children by enrolling them in school, which is most frequently the case. It was only later that the demographic boom following the Second World War – qualified by one author as an 'explosion in education' – combined with the effects of a prolonged period of compulsory education, led to the implementation of school mapping. Decentralization in the early 1980s saw the development of the concept of regional educational forecasting plans (see *Box 3*).

Legal aspects

All discussion about power and authority is set aside here, as well as questions concerning the legitimacy of state involvement or, more generally, public involvement in education by families, churches and various social groups. We will also exclude the socio-political framework within which decision-making in education is carried out. We will concentrate here only on decisions that are liable to have an effect on planning and administration. The point here is not to analyze actual effects – practices – or to confront the 'discourse of law' – the wording of legislation – with reality. That is an area of research for sociology or administrative science.

An initial presentation of the legal aspects presupposes the description of what a legal framework consists of, then the ways of implementing this framework, and finally, control mechanisms.

Composition of the legal framework

The adjective 'legal' taken in the strict sense of the word is far too restrictive; it limits itself to the law. In the broader sense of the term, what is legal includes not just the law, but also the acts that give rise to law of higher legal categories (the Constitution, statutory law, etc), or lower ones (edicts, decrees, orders, etc).

Constitutional provisions fulfil two functions. One is to determine the authorities responsible in educational matters. This is done in two ways: the personal determination of the sole responsibility of the state, territorial authorities, and federated states/provinces; or, a shared responsibility between the parliament and the cabinet, or local assemblies and the executive. What is involved here is the determining of who retains ultimate responsibility in educational matters. Ignoring rules is a sign of incompetence subject to penalty. The second constitutional function is usually to draw up basic rules for the school system: equal access, compulsory attendance, secular or denominational schools, free tuition, etc. No doubt, the solutions adopted by national legal systems can vary, but the differences are far fewer than one might believe. They are reduced by the practice of imitation, the prevalent international environment, and the adherence urged for certain principles. If we add the international provisions themselves, it is possible to justify the existence of a common body of law.

International provisions carry more and more weight in the legal ordering of education: for example, the Declaration of 15 December 1960 concerning the fight against discrimination in the area of learning, the Convention of 26 January 1990 on the Rights of the Child, signed in New York, which came into effect on 6 September 1990, replacing, with the full force of the law, the Declaration adopted on 20 November 1959 by the General Assembly of the United Nations. The Convention on the Rights of the Child specifies the right to education, the principle of equality between boys and girls, the free choice of school, the access to information and educational and vocational guidance, access to higher education, the responsibilities and rights of the family, respect of philosophical or religious convictions, respect of the child's integrity, dignity and rights (association, meeting, expression, etc). Although application often does not quite meet the demands of the law, one should not consider that they are mere pious wishes. Gradually, the obligations formulated are gaining ground when material conditions allow it. This evolution is furthered by the introduction of internal norms by the constitutions themselves in national legislation with supra-legal or legal force. Penalties for violations can also legally exist. On the other hand, in the absence of a possible recourse to legal sanctions either nationally or internationally, moral sanctions increasingly exist. Besides the international world order, one could also mention the place and role of conventions or agreements covering smaller geographical zones, like the European Union. To these can be added a whole series of bilateral agreements and treaties, including those that deal with the education of minorities. Already, numerous examples of the influence of international measures can be noted: the effects of the free circulation of persons within the European Union on teacher recruitment, the social coverage of foreigners, the protest against the recourse to corporal punishment, better guarantees for the freedom of expression, etc. To this may be added the financial activities of international funding agencies like the World Bank, the African Development Bank, etc. By coming to the assistance of certain developing countries, they strongly contribute to a consciousness of new trends which UNESCO, moreover, widely propagates.

Statutory provisions apply to educational matters according to procedures and in areas that vary with national systems. Some solutions are, for all that, common: the determining role of government initiatives, the general impact of statutory measures, and their forcefulness. They are the first elements to consult in trying to understand an education system. They formulate the system's objectives, specify its general organization, determine the jurisdiction of schools, guarantee the rights of families, define the responsibilities of students. National political options and the basic technical choices are eloquently expressed in statutory provisions.

Infra-legal provisions tend to increase as the education system becomes more highly evolved and complex, even in systems that are unified and centralized. The issuing of broadly applied rules has the aim either of complementing legislative provisions, or dealing with problems whose technical nature does not allow for parliamentary involvement. This is a government function, or at least one that operates at the ministerial level.

It is mainly at this level that there arises a distinction between the general systems of common law and statute law, which is already partially evident in the law itself. For reasons that we will return to later, the role of statute law is very important. This law comprises the prime mode of expression for those who wield power in the general interest, and the mode of providing legal protection for citizens, for whose benefit political institutions exist in free-market democracies.

Besides this regulation (national, federal, federated or regional), there exists a subordinate level for working out standards: the schools themselves, either through self-organization, or by completing (possibly through adapting) the provisions coming from above. For a long time, measures of this type were, under various names, considered as measures of an interior nature whose legal control was not the business of the judiciary. The development of controls in the interest of protecting individual rights and freedoms is a sign of our times. It is especially so since in many countries a movement is developing in favour of school autonomy, justified either by a concern with increasing involvement at grassroots level, or an adaptation to the specific needs of the school-going public. This trend multiplies the risk of misunderstanding national objectives, and since it multiplies the number of decision-makers as well, it increases the likelihood of illegality for personnel, parents, and students. This leads us to consider the role of judicial powers.

Judicial provisions. The examination of the nature of litigation – whether before an administrative judge or an ordinary court – and litigation procedure, will be set aside here so as to concentrate on the role of the judicial powers.

The latter are characterized by the mode of intervention: control of legality or liability. If considered in a somewhat simplified and very general way, planning is only rarely concerned by litigation for liability. The rule of law is guaranteed here by a control of the jurisdiction, procedures, and content of decisions. This is the course that all disputes will follow: whether about a refusal to set up courses, classes, schools, decisions to close, refusals to give authorization to create private schools. Whatever happens, every planning and administrative act of the school system is subject to the law, and therefore judicial supervision.

The latter is real. In quantitative terms, it can vary according to the national system. The judge hands down a decision, the interest of which commonly exceeds the solution to the litigation in question. Such is the case of numerous rulings rendered by the *Conseil d'Etat* in the case of France, whether it is a question of the problem of legality of grants from public bodies to private institutions, the organization by students of meetings on school premises, or disciplinary procedures, etc. Litigation is often criticized for the delays incurred, the decision that gives satisfaction to the applicant often leading to little more than a satisfaction of principle.

However, even though the assertion that the role of the judge is to **interpret** the law, not to **make** it – what Anglo-Saxon jurists call 'case law' in their legal tradition – is often considered to be too simple, reference to legal precedents is not found in **countries belonging to the statute law tradition**. Legislation is, itself, the reference. This raises the question: why a legal framework?

Methods for setting up a legal framework

One of the major aspects of a legal framework is its construction according to a principle of **legislative precedence**. This is parallel, structurally speaking, to a scale of authority. For the state, it is expressed in a variety of forms: in constitutional, parliamentary, governmental, ministerial authorities, or those outside the state. Alongside this pyramid, there are territorial authorities and institutions, in this case, schools. All of these are given a legal personality and have set jurisdictions.

If we bring up this principle of legislative precedence (however briefly), it is because it has important consequences for educational planning and administration. Indeed, this principle obliges all decision-makers to be familiar with legislation issuing from a higher authority. Two consequences can be deduced from this. The first is that the legality of any decision can be determined by consulting its legal framework. Jurisdictions can thus be strictly defined: the competent authority, the object that falls within his or her jurisdiction, the standard procedure to be followed. This is of particular importance, for example, in controlling the decisions of state representatives, or those of local communities, or even of schools. Ideally, the filter of regulations is so fine that illegality or injurious negligence are highly unlikely to occur and still less to go unpunished. The second consequence is that the chain of authority allows the state to impose a framework for the actions of others and thereby promote its goals. Thus, the French state obliges the regions, *départements*, *communes*, and schools to respect the national plan and the goals of government educational policy, whether it is for the public education system or for education related to the agricultural sector. All the same, the consistency of a regional educational scheme with the national plan would be much harder to establish than the illegal expulsion by a school principal of a student for a misdemeanour. The solution put forward is, all the same, essential within the planning process, as well as in providing a framework for the recent development of policies encouraging school projects, thus maintaining consistency in the public service, while accepting a certain breadth of activity.

As to this last point, it should be noted that one of the overriding goals in the evolution of educational systems is the recognition of local education initiatives, and therefore the search to integrate diverse local education responsibilities in a national education policy.

Means of review

This is first and foremost a parliamentary responsibility. Here it primarily signifies an assessment, through debate, of the results of education policy, whether an objective evaluation is used or not. The discussion of results with respect to objectives and methods more often than not does not play a role in controlling legality. On the other hand, members of parliament can often raise problems of interpretation or the enforcement of the law. This contributes to the proper use of the law.

Secondly, the control procedure may also spring from challenges expressed by individual citizens or users of the service, concerning a decision or its consequences, either by applying to the person responsible for the decision – submission for an out-of-court settlement – or to one's immediate superior. The procedure of asking for an administrative settlement either avoids the need for a legal settlement or precedes one.

We finally come to the review of litigation by a judge. A sound legal approach, although it is very seldom used, makes it possible to distinguish three elements in these disputes: disputes about legality (a direct challenge to the legitimacy of decisions), disputes about who is responsible for the fact that illegal acts have been committed, and, more rarely, disputes about responsibility arising from an ignorance of the rules, for example, the failure to comply with security instructions in the installation of equipment, or in the supervision of children in the classroom or during recess.

It is in these three situations that case law comes into play. It is usually the administration (including planning, understood in the broad sense of the term) – i.e. the elected counsellors, elected executives, appointed authorities, and civil servants – that is most often the defendant. One must not think that the fact that legislation is preoccupied with determining the jurisdiction of those responsible, only rarely considering the situation of the student or parents, and seldom referring to rights rather than obligations, implies a situation of constant and oppressive subordination to the law. The fact that there exists a strict control over the administration is a legal guarantee for students, families, teachers, and local communities in their rights and liberties. The level of guarantee depends on the degree and quality of control.

II. Why a legal framework?

The question "why a legal framework?" (in the sense of a set of laws, or a system of legal rules) can be answered in two ways: either a historical-sociological explanation – why they exist; or an answer based on 'technical' reasons, the effects striven for, objectives targeted – for what end or purpose.

Why a legal framework: explanation

Historically speaking, the existence of a legal framework largely coincides with the setting up of a single state and reflects this political form, or arises subsequently. The French case is typical of a state that was interested in schooling from the very outset (14th century), relied on it to achieve its linguistic unification (18th and 19th centuries), and used it to achieve national unity and transmit republican values. Far more recently, the same type of national motivations justified the setting up of a legal framework within a number of African states which had just won their independence. After 1870, the accomplishment of German unity was accompanied by an imitation of the Prussian system. The existence of an overall legal framework is definitively based on meeting three conditions: first, a political balance between the state (whether unified, federal or federated) and infra-state 'communities' (i.e. provinces, cities, religious denominations, etc), defining the functions of each; then, **national** aspirations that seek to express themselves either in or through a school system (which can be infra-state: Belgian Flanders, Wallonia, Catalonia, etc); and finally, a legal tradition based on statute law.

The most modern forms of legal interventionism can be seen in societies that are not authoritarian, but whose liberal principles will not go as far as allowing education to be left to the whims of private initiatives or local interests, whether these same societies get involved in the search for quality education for economic reasons, or, in the pursuit of equality for all, for political or social reasons.

This attitude is encouraged by the fact that state involvement plays a role through socially resolving potential conflict among pressure groups, all of whom are interested in influencing educational policy, but who do not wish to do it in the same way or for the same reasons: families, employers, the churches, philosophical movements, political groupings, economists, the government, etc.

It is quite remarkable that in societies with a tradition of providing a strong legal structure for educational planning and administration, the current debate is neither about the existence of this structure, nor on the principle of state involvement. It is rather concerned with the degree of structuring, on one hand, to determine the role of private initiative and their place in the general context of educational freedom (France); and, on the other hand, with establishing the responsibilities of 'infra-state' groupings (Spanish provinces, Italian regions, French territorial authorities) or of the various jurisdictions of federated states (Belgium, Canada/Quebec, Germany/*Länders*, etc).

This legal framework did and can respond to one and/or the other of two modes of intervention in the area of education. One of the modes is the simple process of state legal and regulatory intervention to control private education initiatives. The pursuit of satisfying the collective public interest in education matters is assured by the interaction of the legal formulation of constraints in the interest of the child or teenage student (moral and physical protection) or that of the family (guarantee of quality education), or the economy (promoting learning that is necessary or useful for the future), or the nation itself (training in good citizenship). In a general system based on educational freedom, the conditions and limits of the exercise of this freedom are formulated in this way. If state intervention is limited to this mode only, the administration and planning functions are reduced. Ultimately, the regulation between the educational 'supply' and the 'demand' is brought about by the mechanism of competition. The other mode is that in which the state, or any other authority, becomes involved in the direct provision of education services. There is thus a public service form of education, a non-commercial service of general usefulness. The administrative and planning functions are essential whatever the recognized level of decision-making for creating schools, deciding their activities, and supervising their property and personnel.

Why a legal framework: the justification of goals and desired effects

The legal framework that has just been described is first of all the expression of social regulation by a responsible and competent political authority, and of competing objectives and methods. The political balance thus achieved is never definitive. It can be challenged.

The motives for getting involved in the educational area being themselves diverse within the state apparatus, the legal framework will determine the seat of responsibilities between the federal state and federated states (Germany), or between the state and the provinces, or provinces among themselves (Belgium, Spain), or between the state and the regions (Italy), or between the state and territorial authorities (France). The school system will thus fall within the context of federalism, a regional organization, or a simple decentralization; or, and this is increasingly rare, it will remain the total responsibility of a central authority.

The legal framework has limiting effects, since its aim is to define responsibilities; also, it serves as an instrument to promote choices.

The effects of constraint

To define the legal framework as having as its aim the generation of constraints could raise a few eyebrows. This is apparently to misapprehend the fact that it can sanction laws – which is what it does, in fact – for parents (right to information, right to participate, etc); for students (student freedom, right to guidance, etc); or for staff (organizational guarantees). In reality, to oblige a school to respect programmes or a disciplinary procedure is certainly to impose constraints (of content, procedure or form). To oblige parents to respect compulsory education is once again a form of constraint. And to recognize the right of high-school students to organize meetings under certain conditions in their school, obliges school principals to respect students' rights, forces the principals to supervise the event, makes them responsible for an erroneous interpretation of the rules in the case of an illegal refusal, or of an illegal approval.

A political or a sociological analysis of the education system can benefit from a comparison of the rights and responsibilities of each of the parties and beneficiaries. The results will make it possible to learn more about the system, making it possible to qualify it as authoritarian or liberal.

For the legal expert, any obligation that affects the parties involved – an equitable treatment of exam candidates, for example – is a right for the user of a service (here the candidate) and every right – the right to the freedom of conscience and the expression of opinions, for example – necessitates for the person thus entitled a respect for the rules of procedure, and for the administrator the respect of the law itself.

The **constraints linked to objectives** that we mentioned earlier, are the first ones that the responsible politician sets for the school system. A failure to meet the obligations of respecting these objectives and pursuing them can be ascertained through evaluations and controls (inspections). However, they are often difficult to identify, and even harder to punish.

In terms of sheer quantity, the **constraints linked to organization and operations** constitute the most significant portion of legal decisions. On one hand it consists of an entire set of administrative laws for organizing the school system: organization into one or more public services, ministerial organization, organization of state services in the regions, organization of schools, *collèges* and *lycées*, the composition of various consultative or decision-making councils, etc. On the other hand, a set of laws deals with the educational function itself: organization of the curriculum, definition of programmes, setting up of means for controlling and granting certificates, the choice of guidance procedures, the imposing of compulsory education, development of the school map, etc. These laws governing activities entail numerous constraints for the planner and administrator: for drawing up a school plan, obtaining investment, providing financing, deploying personnel, enrolling students, providing teaching services, ensuring harmony within the school, etc.

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The **constraints linked to protection** – an intentionally bold phrase – cover situations where rules are justified by the will to protect various social categories against administrative risks. This includes teachers' responsibilities, their independence, and their freedom of opinion. And it also includes protecting students and parents against arbitrary educational programmes, unmonitored disciplinary measures, non-respect of privacy, attack on religious freedom, inequitable treatment, etc.

The effects of a legal framework

Aside from the effects intentionally aimed at and pursued by the setting up of a legal framework, the existence of the latter gives rise to consequences beyond the conditions of legal control mentioned above.

A well-defined profile of how administrative rules are organized and the responsibilities of each type of school, is a convenient tool for the planner and administrator. Indeed, the latter are not obliged to take into account particularities, which are moreover often based on local custom. The risks to be avoided are thus firstly that of a guiding aim becoming an obsessive goal, and secondly, of uniformity becoming an obstacle to the autonomy that a school needs to fulfil its mission and to take into consideration its social environment and student population.

The precise organization of each basic course and the way degrees, diplomas and certificates are granted presents a number of advantages. The planner can more easily deal with the delicate relationship between training and employment, the level of qualifications furnished, and the provision of special industrial or service-sector skills. The employer has points of reference for recruitment and the assignment of personnel, and these points of reference are both permanent and stable. However, the effect of the *time* factor must be taken into consideration. As a first observation, for the above-mentioned advantages to exist, there must be stability over a period of time. And as a second observation, a fixation on maintaining the status quo hinders the adaptability needed within evolving societies as well as the implementation of adjustments. Finally, it should be noted that all innovations in the school system (new kinds of training, new degrees) will only be really accepted and approved – especially by employers – after a delay which may even be years.

As long as a major part of the curriculum is not independently determined by the school and restricted by its recruitment resources, parents of students should not encounter much disruption to schooling if obliged to move to another location.

Administrators at the lowest levels of educational administration – the principal of a small school – while having the responsibilities of an organizer and leader, know full well what they can or cannot do: in supervising students, what is in keeping with their rights or required of them; what is allowed or permitted in relations with parents; what can be demanded or not demanded of teachers; and what is permitted in the organizing of studies, etc.

III. Legally determining the competent authorities

In complex school systems, the law first of all assures a distribution of powers among certain authorities, some of whom are responsible for decision-making and others for execution. It also distributes decision-making powers: between state and communities, state and schools, central and territorial authorities, etc.

This distribution concerns planning first, then the administration of the system and its components, and finally the activities of all parties involved in education.

Concerning this last point, the first decision to be made is to set the limits of private initiatives to create schools or provide teaching services. The recognition of this right actually comes from international provisions which tend to guarantee parents the right of educational choice for their children in keeping with their philosophical, religious or social preferences. Article 26 of the Universal Declaration of Human Rights, adopted and proclaimed by the United Nations on 10 December 1948 specifies in its paragraph 3 that "parents have the right to choose the kind of education to be given to their children" and the International Covenant on Economic, Social and Cultural Rights adopted on 16 December 1966 is even more precise in its article 13.3: "the States Parties to the present covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions". This demand can no doubt be met in a school system consisting of a single public service, but that presupposes philosophical pluralism. It can also be met, and is most often the case, in a system comprising a state educational service and private schools, or only private schools. This implies that access to various schools is fully authorized. The teaching vocation is also a way of translating freedom of expression and thought. The exercise of these rights is a matter for legal decisions concerning the basic rules that apply to teaching. Essentially, these are expressed by an educational administration policy, that is to say, and let us not forget this, a unilateral decision by public authorities regulating private activity in the area of education: control of qualifications, ethics, the hygiene of the premises and their conformity to health standards. **These rules are decided and applied by the competent authorities.**

The examination of the legal decision in terms of these authorities is possible on two levels:

We will not dwell on the first, which consists of the legal decision as defining the **subject matter** within its jurisdiction and **decision-making procedures**, i.e. what the authorities can do and how they can do it.

The second level concerns the basic sharing that governs any school system: on one hand, between the state and the territorial authorities, and on the other, between the state and the schools themselves. Solutions to the two kinds of sharing vary according to the national education system. However, all education systems have in common the obligation of settling jurisdictional responsibilities, using techniques that generate solutions and reconcile different policy orientations.

The state

The state may be centralized, as is the situation in France. The question then arises as to how much power this state allows to territorial authorities and schools. In the case in point, the state maintains its supremacy in planning and educational policy choices by seeing that these choices are respected by territorial authorities and schools. It is the guarantor of the national interest.

If the state is of a federal or confederal type, jurisdiction in education matters can be shared between the federation or confederation and its constituents. The most frequent solution is to place responsibility for general law, i.e. covering all educational matters except some limited exceptions, in the hands of the regional authorities: German *Länders*, Swiss cantons, Canadian provinces, Belgian regions. From that point on, the problem is expressed in the same terms as for a centralized state.

An international comparative analysis of the rule of law and the possibilities of its evolution makes it possible to put forward four propositions.

In the first proposition, the jurisdiction of the state is constitutionally expressed and guaranteed. It is rendered by legislative procedure or, at least, by governmental or ministerial decisions. It can be observed in the national examples given below. It does not depend on the field of the jurisdiction in question, or on its scope.

The second proposition is precisely that the scope is extremely variable and largely depends on the constitutional history of the nation, and the relations of the central authority with the regions or with the churches. The variations specifically concern the divisions, state/regional authorities and state/schools. Decentralization became effective in France only in 1986, replacing a body of legislative rules that were only a few years old. Across the Channel, the distinction between England, Wales, Scotland and Northern Ireland has existed for many years. But situations are not frozen in time, and the law does not exist merely to justify a state of balance. In fact, it can be used to bring about two types of development.

The first – which constitutes our third proposition – is that the international order, whether world (UN, UNESCO), or regional (European Union, OECD, etc) supports the central role of the state to the degree that the signatories of the major conventions and declarations (Universal Declaration of Human Rights in 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, the Convention on the Rights of the Child of 1990) are states. In this way, the state is the guarantor of the application of these conventions and declarations, and must enforce adherence by territorial authorities and (or) local authorities and (or) schools. Today, the world order and the European order are increasingly organizing education through decisions about aims and objectives (concerning the education of girls, minorities, migrants, for example). It is even quite clear that they do it more and more, even if the subsidiarity principle applies, i.e. that decisions should be taken at the lowest possible level (the Treaty of Maastricht, for example).

However all of this structuring draws upon the main principles that apply to education. A more technical consideration brings about the second development – which constitutes our final proposition. For various and sometimes contradictory reasons, there exists a strong trend in favour of developing infra-state responsibility. This can arise from a desire to reduce state involvement, a wish for more democratization, a transfer of powers to encourage local financial commitment, or the pursuit of greater efficiency. Experts dealing with international financing from the World Bank, the African Development Bank, the South-east Asian Development Bank, or the European Union, thus often encourage the decentralization of school systems in states that have recently achieved independence, in order to widen the range of available resources, to encourage democracy by promoting responsibility at the local level and to develop innovative skills. It is in the area of state jurisdiction that national legislation can vary. In the case of France, the state determines the main rules for national planning, the general organization of studies (cycles, programmes, timetable), and the means of validating these (diplomas, marks, exams); it draws up the administrative and financial arrangements for institutions and schools; it manages employment and, in part, funding for equipment; it recruits, trains, and manages personnel. Essentially, general decisions are made by the Ministry, while the application of these general decisions, usually in the form of individual decisions, is the responsibility of decentralized state administrative authorities. This is due to the trend towards **deconcentration**, which concerns, for example, the nomination of a public employee, his or her evaluation, the creation or suppression of a position, the setting up or elimination of an optional subject or a course, the distribution of students in a school into classes, etc. Infra-state responsibilities may be assigned to two categories mentioned above: territorial authorities and schools. We have already treated the possible motives behind a **national decentralization,** which applies to the first category. So-called technical decentralization, or **decentralization of services**, is more important for education. It directly concerns the problems an education system has in adapting or innovating, both of which are now considered more feasible in a decentralized system, in which schools have a large amount of autonomy.

Local authorities

Here, too, jurisdictions vary in the way in which autonomy has evolved locally. It is also an expression of the ratio of the overall national population to the regions. The greater the former, the more likely the educational administration is to be left with only the 'commanding heights'. The smaller the population and the fewer the resources of the regions, the more they need a state that can assist them, or a restructuring that can make them part of an educational network: both for rural basic education and long-term secondary education. Both in developed and developing countries the lack of resources can make legally assigned responsibilities quite academic indeed: this is true for the acquisition of equipment, or even their maintenance in a rural context.

Three problems, as well as the legal principles governing solutions, apply to all systems.

The first is that the regions have in spatial terms a 'zone of jurisdiction', i.e. a set-up exists whereby authorities have a responsibility within an administrative district, but not outside of it. School law is therefore obliged to choose either to conform to the boundaries of its own constituency for recruitment and allocation of students, for example, or to ignore them completely. The problem of primary school students residing in one municipality and attending school in another is of real importance in France because it affects the sharing of financial costs by the municipalities. School law must therefore take into account the existence of various levels of decentralized regional administration. Thus, French school law assigns to the municipal level the elaboration of school mapping for primary schools, the yearly calendar (for class or school opening and closing), the management of school buildings, and the responsibility for running the schools. One could say that the general trend of national law is to assign 'basic schooling', or at least the first years, to the very lowest community level, that which is the closest to the users of the service. The French decentralization of the 1980s entrusted the *départements* with the equipping and managing of the *collèges* – for 11 to 15 year-olds. However, it is the *région*, made up of several *départements*, that is responsible for planning general secondary, vocational, agricultural, marine, aquacultural and maritime schools through a long-term educational plan, and also for the projected programme covering investments, construction, maintenance and operations for secondary schools at the upper secondary school level (*lycées*).

The second problem concerns the degree of autonomy allowed to intervening authorities. *De facto*, this depends first of all on the resources that they have at their disposal, or on the type and amount of state transfer payments. *De jure*, the degree of autonomy then depends on the existence or nonexistence of state **supervision** of local decisions and the means of implementing them: preliminary approval, nullification, and power to appoint a sub-agent. Thus the above-mentioned responsibilities of the French regional authorities are not subject to any supervision. The decisions taken by local decentralized authorities – executive and occasionally deliberative bodies – are subject to a **review of legality** by a judge on referral from a state representative – or from an elected representative, parent, or teacher. Finally, the degree of autonomy depends on the area of jurisdiction and on its aim. The fact that communities are responsible for premises, equipment, and daily operations is generally accepted. In this situation, the communities simply assume responsibilities of a material nature. It has been possible to share responsibilities between the state and territorial authorities based on a distinction between the means and materials used for teaching (i.e. buildings, operating funds, textbooks, etc), which is a local responsibility, and the activity of teaching as such (primarily the teaching personnel), which is the responsibility of the state. This arrangement was made possible on the basis of the argument that local authorities were merely responsible for managing materials. In fact, this was most certainly the case in

19th century Europe when there was only a question of paying for housing and school furnishings, and this may be the situation today of a developing country in which the material side of operations is modest and provided through the efforts of the village communities. However, the introduction of new communication technologies have disrupted and will continue to disrupt this kind of traditional sharing since the choice of equipment is no longer a neutral factor for education. Contributing communities exert an ever greater influence on the act of teaching itself. The state's role should shift towards procedures to correct the inequalities which could arise from the actual extension of local power. On the other hand, no commonly applicable rules exist for education systems concerning the role of communities, especially in the area of the recruitment and management of teaching personnel, nor in the drawing up of programmes and certification. All of this is contained in French law under the concept of educational activity which is the sole prerogative of the state as a provider of a national public service.

The third problem to be considered is the sharing of responsibility, both at the community level, and between the community level and the central level. It is expressed in politico-legal terms as the mutual respect of legal jurisdiction. It can also be expressed in terms of unity or at least national coherence. In the French school system, three rules provide solutions: first, the obligation to respect national choices in education policy and national planning; next, the absence of a hierarchy among territorial authorities; finally a judicial review of the exercise of authority. Indeed, the encroachment of a regional authority on the territory or jurisdiction of others, or its intervention in areas outside its jurisdiction are considered illegal. In Germany, a federal/*Länder* commission (Kommission für Bildungsplanung – BLK) has existed since 1970 for the purpose of planning. In the United States, various federal bodies provide a periodic audit of the school system and the prospects for reform, for the benefit of those responsible for education. In short, national coherency, whether within a single state, a federal one, or federated states, either between or within them, can be assured either by legal, binding solutions – as in France[7] – or by

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7. Administrative systems operate most often on two levels, the municipality and a wider region, or even on three levels.

various kinds of consultation and co-operation – as in Germany and the United States. The problem of co-ordinating regional plans with the national plan may sometimes be settled contractually, thus using a different legal instrument.

We have based the entire foregoing presentation on the existence of local regional authorities responsible for education. The problems raised and the legal solutions provided also apply when we are not talking about territorial authorities in the strict sense of the term, but rather local educational authorities, meaning authorities which are fully empowered: school committees for the Swedish 'counties' (*kommuner*), *Local Education Authorities* (LEAs) in the United Kingdom, local authorities in the United States and Canada, etc.

Box 3: Decentralized planning in France

The planning of responsibilities for territorial authorities arose with the decentralization that took place at the beginning of the 1980s. Previously, it was the responsibility of state representatives, in the Ministry of Education, whether it was a question of primary schools, *collèges* or *lycées*, for all of which the basic planning document in terms of space and time was the school map.

Communal responsibilities in the investment in and management of schools are longstanding (19th century). Those dealing with educational planning do not require lengthy explanation. Legally it is the *communes* who decide the creation or the setting up of elementary and nursery schools and classes on the recommendation of the state representative, i.e. with the reservation that the state has the resources available to create teaching positions. One must admit that in terms of administrative practice, real power has remained in the hands of those who are responsible for budget items, and who can thus create or eliminate these items.

Regional educational planning. For overall secondary school teaching and training within the national education system, but also aquacultural, maritime and agricultural training, the regions have two claims to jurisdiction and planning in the broad sense of the term. Each region establishes a projected plan which defines its training needs for the long term in both quantitative and qualitative terms: levels of training, the nature of training (general education, vocational and professional training), and where it takes place.[8] It is founded on the foreseeable evolution of school demography and training choices. It takes into account overall needs, whether these are subsequently satisfied by state or private schools. The adoption of the plan is preceded by consultation with an academic council. The project must have the consent of the region's *départements*. This plan must respect national priorities[9] and is adopted by the regional Council.

On the basis of this projected training plan, the region develops a projected investment programme for the secondary schools under its jurisdiction which must win the approval of the municipalities (*communes*) for the setting up of new schools. This programme can show the foreseeable cost for each operation. It can classify projected operations according to an order of priorities. The management of teaching positions remains the responsibility of the state.

Educational planning at the level of the *département*: within the framework of the projected plan for regional training, each *département* establishes its projected investment program for the *collèges*, consistent with those of the regions (Durand-Prinborgne, 1998).

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[8] The region has the same responsibility for apprenticeship (block-release training) and in-house training, in addition to initial training.

[9] I.e., the goals of the national plan and educational policy choices. The Ministry of Agriculture, within its jurisdiction, 'controls' its elaboration: it publishes a projected national plan for agricultural training prepared by a working group - see the Ministry of Agriculture and Rural Development, General Education and Research Department, *Schéma prévisionnel national des formations de l'enseignement agricole 1993-1997*.

The schools

As for the schools themselves, the law first of all expresses a choice of educational policy which is generally located between two extremes: one is to consider them as mere executors of education policy, the other is to recognize an autonomy which implies decision-making powers, either in school administration, planning, or both.

The first solution can be seen in school systems of limited size. It can also be found, for reasons of national unity, in more extensive systems, or in the initial setting up of a national education system (in developing countries). It can be found when authorities wish to relieve schools of all administrative and financial concerns, while leaving them a very large autonomy in terms of teaching. Finally, this solution can be appropriate for some schools that are not large enough to justify their own administration. In all of these situations, the school can find itself in a position of not being considered as a legal entity, with its own budget. This is the case of primary schools in France, which in no way legally dispenses them from having to have a **plan**. The administration is confined to its most basic elements: the internal organization of services, security measures, and individual decisions concerning the school pupils.

The second solution, on the other hand, is to recognize the autonomy of the school. This is expressed legally by two main features in the rules governing them: the conferring of a legal identity, and the existence of a separate budget. This autonomy can be a mere administrative convenience. It then consists of a decentralization of services. It unburdens the national or regional administration, but it can become the instrument of a local adaptation to national education policy, or the expression of genuine education policies. The fact that the specific profile of the school-going public for each school (previous academic history, social or ethnic background, urban or rural origin, etc) and that of the environment (strong regional identity, geographical conditions) are taken into consideration, justify these adaptive measures.

Once autonomy is granted – or recognized – it is given expression by making the school a legal entity. This is the case of French *collèges* and *lycées*. It implies the existence of financial autonomy as well: the school has its own budget. Moreover, it is evident that real and concrete autonomy will depend on the extent of the school's own resources, which falls outside of the law.

The law determines the nature of the legal personality assumed by the school, its instruments of management (the executive, deliberative body), the composition and operation of collegial proceedings, and the responsibilities involved.

The degrees of autonomy can vary. They do so, first of all, according to the existence or nonexistence of a governing authority. In the latter case, they differ according to the method of intervention adopted by the governing authority, it being understood that practices can be freer than regulations seem to suggest. This is the case in France for *collèges* and *lycées*, which are under the authority, mainly financial, of the body providing funding. State administrative control is exercised by its representative (the prefect), and state 'pedagogical' control is exercised by the ministerial representative (school principal and/or inspector, director of departmental services from the ministry of education).

They can also vary according to the aims of the recognized authorities. There is nothing standing in the way of a school using the means it has been granted as it sees fit, especially in terms of personnel, as long as this is done in accordance with the organizational provisions that apply to them. Nor is there anything stopping it from developing its own internal regulations, choosing its own teaching methods, organizing its disciplinary rules for students, and seeing to their application. The problem is of a quite different nature when considering the margin of liberty allowed, as well as the powers of decision, affecting human resources (recruitment and teacher management). As an example, the prime school authority for French *collèges* and *lycées*, the school board,[10] votes the budget, decides on the interior regulations for the school – which must assure the respect of pluralism and secularity, and provide for and encourage the progressive attainment of student responsibility – and sets the conditions for implementing teaching and educational autonomy within the framework of, and in conformity with, national policy etc.

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[10] Indeed, besides the school board there exists the disciplinary council, class councils, a student council and sometimes a commission for hygiene and security.

It would be appropriate to end this presentation of the legal determination of the competent authorities by making a few summary observations.

The first is to make clear that the autonomy of the school *can* be expressed (*must* be under some laws) through the development of a **school project**: an analysis of the environment and of means available, a setting of objectives and deadlines, and the adoption of an evaluation process. In an education system, where the 'supply' is very wide, the project can take the form of a certain type of teaching or school life offered for parental choice.

The second is to underscore the fact that all school responsibilities can only be applied by respecting not only the school's own predetermined scope, i.e. its areas of responsibility legally determined in advance (areas which can be modified, of course) but also the general legislation governing the protection of family, student and teacher rights, etc.

Another important observation is that if the autonomy of schools opens opportunities for flexibility and adaptation, it also raises the problem of the national coherence of initiatives. This can be resolved by obliging schools to respect national choices, through administrative supervision, and by the naming of a school principal who represents the state. To a lesser degree, the problem is much the same for respecting regional plans. Here, too, the law puts forward a balance. This will be subject to change. At the end of a comparative study between English, Dutch, and French education systems in terms of the role and limits of school autonomy, undertaken when information technology was initially introduced – in particular computer assisted teaching (CAT), at the beginning of the 1980s – a basic conclusion was reached: there was a sharp contrast between the initiative of some schools deeply committed to using CAT in the first two countries, and its widespread introduction in France, but with what was often only a half-hearted engagement from schools.

This last observation is of capital importance. Everything that has been said about schools so far was in the context of state schools dependent on public education services. But in fact, all the foregoing observations apply equally to private schools. The latter have greater scope for self-organization, since the state authorities do not intervene directly. Nevertheless, they are also subject to, at the very least, a body of rules governing administrative procedure, and then sometimes to constraints imposed as conditions for obtaining grants, as well as sometimes to obligations in exchange for certain advantages, as part of a contract linking them to state education.

IV. Legally determining planning and administration instruments

The legal determination of the competent authorities was treated in *Chapter III*. Now, it is necessary in terms of law to determine the legal instruments for planning and administration, before defining those that correspond to the **basic rules** that apply **within, to** and as given **by** the education system, whether these rules are binding on the authorities or enacted by them.

The French Constitution defines these instruments only indirectly, to the degree that it determines the jurisdiction of parliament and the government: laws express the first case, simple decrees the second. It always does so indirectly, when it assigns a given area of jurisdiction to either one or the other. Thus, article 34 of the Constitution of 1958, 'Relations between Parliament and the Government', states in *Chapter V* that "the law determines the fundamental principles...of education".

The various types of public involvement in terms of aims – planning, administration – in terms of the level of decision-making – the state, infra-state bodies, schools – makes provision for various legal instruments.

Three categories can be distinguished: first the law as an instrument of planning; then the law as a framework for administration (which allows for a wide application of administrative provisions); and finally, the contract, and the use of contractual procedure.

The law as a planning instrument

In a liberal democracy, university and educational planning is done through incentives rather than by directives and coercion. If the decision to set up schools and training facilities within an infra-state region is the responsibility of a decentralized administration, then the role of national planning is reduced to the drawing up of principles and guidelines.

Apart from the laws that provide a framework for the administration, or regulate non-parliamentary or governmental planning powers, there exist various categories of laws, which go under different names, according to country.

Law covering the Plan

This law is a legislative act which, on the basis of a government bill, decides, for the Plan's duration, the national goals and objectives. In fact, its elaboration has nothing parliamentary about it. Parliamentary involvement generally amounts to a critical analysis of the Plan. The education sector is implicated in this Plan at two levels: its elaboration, and its effects.

The elaboration process is less important for the locally elected representatives, decentralized state services, and economic forces, than for the specialized planning consultants working for the government. The preliminary work of the French State Planning Commission, undertaken by study groups and commissions, has resulted in several publications and given rise to much analysis.[11] The quantification of choices in education policy is limited, except for costs. There is a setting of objectives and goals: the development of rural or technical schooling, apprenticeship, etc. For several years now, planning has been essentially part of a contractual procedure negotiated between the state and the regions, especially for the expansion of university buildings and equipment. Regional contracts provide for a time-phased, financial participation from both co-contractors, who agree to purchase equipment in keeping with regional aspirations and national priorities.

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[11] Secrétariat au Plan, 1991; Commissariat général du Plan, 1993. Several reports were devoted to education: during the preparation of each Plan, the main themes chosen by the government are liable to change. Key themes were employment, social assistance, etc. The Report to the Prime Minister by the Commission headed by Alain Minc (1994), devotes only *Chapter 8* to 'education on the move'. It briefly analyzes what exists and lays down general propositions for the evolution of the education system so as to obtain better results. It is neither an act of planning in quantitative terms, nor really a set of propositions affecting aims.

Box 4: Contracts for the national-regional Plan in France

In conjunction with national planning, contracts relevant to the Plan are concluded between the state and the regions. Initiated with the 10th Plan (1989-1993), this procedure continued through a new generation of contracts for 1995-1998, and also in 1999.

Contract-based links focus on the main lines of national policy. These Plan contracts are not just limited to education and training – quite the contrary – but training in the broadest sense has a large place. Their contents oblige the contractual partners to fulfil precise financial commitments in keeping with a schedule. This essentially concerns technical equipment for *lycées*, and the development of certain kinds of training. By creating contractual links, the state can steer its educational policy in an efficient manner without having to use coercive measures. By playing down the aspect of sovereign public power, it assures the adherence of the contracting partner to its choices; this is the guarantee that objectives will be reached. The state can also find supplementary resources needed for policy, as well as readjustment mechanisms in favour of disadvantaged institutions. Within the context of the national Plan entitled *Université 2000*, the contractual process largely concerned higher education (Gravot and Marchand, 1997).

The effects are a stimulus to all stakeholders outside of the state apparatus. But, as mentioned earlier, communities and schools must respect the Plan's goals. In practice, this comes down to prohibiting an outright contradiction of it, but leaves ample scope for education policies which can favour particular goals.

Educational planning appears justified and justifiable in any context. It is not only of relevance to centrally planned (former Eastern

European communist countries) or developing countries' economies. The cost to the public, on one hand, and the fact that educational activity is a long-term affair – due to the length of teachers' careers, the long periods that studies require, the time it takes to achieve national goals, etc – justify planning. However, development procedures and their content are bound to vary according to the relation between the state and infra-state authorities and the status of the schools themselves (i.e. their degree of autonomy). Because of its specific development and content, the French Plan is not really an exportable tool. Its application – especially by direct imitation – would not necessarily achieve positive and effective results in developing countries. However, an acceptance of a central planning process should exist in all countries. This acceptance depends on the alignment of planning with profound national aspirations and credibility in carrying out medium-term commitments. We have already stressed how French solutions have evolved via a system of contract-based links between the state and the regions.

Given the above, planning within a legal framework has two distinct aims, independently of the form that the planning may take, whether a state norm imposed unilaterally, or control through a policy of contractual partnerships concerning commitment to goals, objectives and the financing of education. The importance of each of these two objectives can vary. However, the planner must deal with the quantitative problem of enrolment capacity. The possible responses depend here on political choices (the length and method of education, class sizes, the number of teaching hours, etc), of demographic data (overall increase in population, interior migration, immigration), and social data (social demand for education). The planner must also deal with a qualitative problem: the choice of training offered. In developed states with an ageing population, the second problem has more importance than the first. In developing countries, with strong population growth, the problem to be dealt with as a priority is enrolment capacity.

The programme law

The programme law exists in many forms in a great number of different national education systems. It is a law with long-term repercussions – like the law governing the Plan – but which comprises a year-by-year schedule, financial commitments of predetermined sums, with an authorization of expenses and lines of credit to cover them. Recourse to this law is an expression of policies for upgrading large-scale public resources. Enforcement depends a great deal on the long-term effects of an annually renewed budget.

General law governing education

The main objective of this kind of law is neither to programme expenses in temporal terms, nor to determine the objectives for the duration of a plan. What is more at stake here is the signalling of educational aims, targeted objectives, accompanied by genuine decisions and guidelines. Its solemn nature is to be noted. The law has various consequences depending on the nature of its different measures, some being very constraining indeed.

Box 5: The French law governing education of 10 July 1989

A law governing education is in itself a form of planning. Passed by Parliament, it is prepared by the Minister and submitted by the Cabinet. In the law governing education of 10 July 1989, it is basically a question of setting aims and objectives, whether or not accompanied by a schedule. The latter makes provision for "every child to be enrolled at three years of age in a nursery or kindergarten" (Article 2), and that "the nation sets itself the objective, within a decade, of promoting a given age group to obtain at least a vocational training certificate or a technical school certificate, and for 80%, a school leaving certificate (*baccalauréat*)" (Article 3).

Basically, national planning does not usually come under this kind of law, which essentially determines national aims and objectives on a long-term basis, but instead under the law governing the Plan. The latter gives directives and makes the choices explicit. At the state level, it is *the* essential document.

The ignorance of the provisions of one or the other of the aforementioned laws, even if it is due to the lawmakers themselves – i.e. the government – can give rise to political debate; however, it cannot be referred to a judge to determine an offence or an illegality.

The law and provisions with wide implications – the administrative framework

We will consider here only the instrumental aspect of legislation understood as a **means** of action. Its content, i.e. the examination of the basic rules, will be treated in *Chapter V*.

Law and basic principles

These are legal provisions of a legislative nature which determine the rules that apply to 'sensitive' areas affecting civil liberties:

- dedication to the principle of educational freedom given the absence of a constitutional sanction

- legislation governing the expression of this freedom
  - conditions for the opening of schools
  - applicable police rules (capacity, hygiene, building safety) to accept or deny the opening or suspend operations
  - conditions to obtain state financial support (grants, contracts, etc).

A judicial review of legality exists, as well as the review of the constitutionality of laws. Although not overabundant, this kind of litigation, consisting in French law of decisions of the Constitutional Council and decisions of the Council of State, is nevertheless extremely important for its theoretical interest and its practical implications. Although the judge does not make law, the way that he/she **interprets** the law is very important and subject to commentary.

- the rights and duties of territorial authorities in the area of education; their existence, powers and relations with the state being constitutionally guaranteed

- the obligation to provide teaching facilities and (or) the obligation of families to comply with compulsory school attendance: the first decrees a child's right to an education; the second concerns possible exemptions accorded by the school. Failure to meet these provisions, whatever the excuse, comprises an attack on personal freedom
- determining within the school environment the means for exercising the individual public freedom of conscience, opinion, expression, meeting, and association.

Some legal systems recognize, alongside the law (taken in the strict sense of the word) certain principles that have a value above or equal to the law, which are variously expressed, i.e. fundamental principles of law recognized by all nations, and also operating as safeguards for freedoms and the status of the individual. This is the case of the right to attorney, and respect for personal integrity, etc. A number of these principles are increasingly integrated into provisions which apply internationally.

School law cannot be reduced to provisions dealing with education alone (even though these are the most widely known), i.e. measures that are formulated directly to deal with one or the other of the five areas which have been listed above. The administration of education is also largely compelled under all national legal systems to take into account and to respect legislative provisions that deal, for example, with the general system of public services, labour relations, health protection, the social protection of childhood, and statutory provisions applying to civil servants and public employees.

General administrative provisions

Under the double pressure of the impossibility for the state to do everything, and that of the legislator to legislate for all cases, come other measures, which are lower down the scale in legislative authority.

These provisions exist first of all to organize the school: the administrative bodies, the sharing of responsibilities among them, the kind of schools concerned, their organization (deliberative, executive and consultative bodies), controls, etc.

They next regulate the exercise of duties, either teaching (programmes, timetable, certification), or the setting up of a network (school mapping, planning and allocation of equipment). All organizational decisions concerning teaching, the size of classes or seminars, hours, the necessary scientific equipment, required teacher qualifications, are in themselves a source of costs. They must therefore be understood in terms of their immediate financial consequences, as well as over the long haul, and thus in terms of planning. Of course, the same applies to special decisions taken within the framework of general measures: introducing a subject, a course, a section, etc.

These measures, finally, regulate the conditions for enrolling of students and the security of schools.

Among general provisions, should be mentioned those relevant to personnel, whether teaching or non-teaching personnel. If distinctions in status between state, community or school employees are less significant in operational terms than is usually admitted, they are nonetheless legally important. They come to bear on the administration in procedural terms. Moreover, the main problems of personnel involve the nature of obligations between salaried workers and their employer, with consequences in educational and development costs, or the reduction of the capacity of the education system to adapt and innovate.

According to the various procedures in the application of the national laws in question, the wide-ranging decisions just mentioned can be contested as being unlawful. The same applies to individual decisions taken on the basis of precedent: the opening or closing of a department, the admittance or refusal to admit a student, disciplinary measures against a student, and individual decisions concerning career management.

Recourse to contractual procedure

Recourse to contractual procedure based on various considerations is encountered in three kinds of situations. All of these presuppose a political and cultural system which assures the contracting parties that their contracts will be respected, and that this principle is effective. Contracts are often simply an expression of **agreements**.

The first type of contractual procedure is the **partnership agreement concerning common objectives** that a school or a school administration signs with the parties concerned, most often with various associations which are sometimes qualified or authorized to undertake educational support or intervene in the school environment. A school that wishes to introduce students to historical research is assisted by the city that wishes to reinforce local culture; high schools, associations and communities combine their efforts to fight against violence; volunteers take on students who have trouble learning how to read. These activities cannot be thoroughly examined from the point of view of planning and administration. They are nevertheless of interest and importance in difficult zones, in order to provide cultural support or tutoring to disadvantaged students, or to allow adults to complete their studies (illiteracy, retraining, refresher courses).

The second type of contractual relation directly concerns school planning. At the lowest level – although by no means negligible – is a local community's commitment to provide equipment, in return for the commitment to provide the necessary teachers. There is only a difference in level and sometimes in legal formulation when it comes to the **state-regional contract** as it exists in France, by which the state allocates resources on a contractual basis. A regional programme which agrees with state objectives receives the financial resources needed to support it, often of a certain order of magnitude. This type of collaboration sometimes raises the question of whether the contract is only a means for the state to extend its own education policy, or whether it indeed authorizes regional educational policies. The advantage of formulas like these is to increase the funding of education services (see *Box 4*).

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The third type of contractual relationship is encountered, contrary to the preceding one, at the school's daily operating level and only quite exceptionally has consequences on the planning of the overall school network (setting up of new courses). It brings together a school on one hand and the educational administrative authority on the other (state, region, province, etc). There are two approaches, which are incidentally quite different, that show that recourse to this procedure can be longstanding or of more recent appearance and development. The first is to base the activities of the school and personnel on conviction and not coercion: the adherence to objectives expressed in the **school project** entails the allocation of financial resources. The second approach, which is spreading in France, was first considered to be in contradiction with a unified public service guaranteeing the equality of users. The diversity of educational 'publics' means that the school, while obliged to respect national aims and objectives, has a certain amount of leeway for implementing them. It develops a project – objectives, ways and means – through dialogue with the supervising authority, the latter approving and guaranteeing financial support. Finally, at the end of a predetermined period, a comparative evaluation is carried out between targeted objectives and those which were actually achieved. The content of a school project can vary according to national legislation: the distribution of students (in groups, classes, divisions), the teaching methods adopted, school regulations, etc. The questions that are still being debated about school projects are, on one hand, whether or not it should include the drawing up of timetables and programmes, and on the other hand, how to manage the human resources on which the project depends. The project takes for granted consensus among personnel; it excludes coercion. It therefore assumes that recruitment or appointments escape from the automatic application of rules that do not take into account school choices. Thus, although the type of legal status of personnel matters less than it would appear in terms of its nature or description, the school's role in building up its own human resources (especially teachers) is of capital importance. On this point, national law varies considerably.

V. Legally determining basic rules

Here it is a matter of considering those basic rules that apply not to the planner and administrator, but to the users of the service, who are the parents and students; for example, compulsory attendance, the obligation of submitting to controls and the acceptance of the constraints imposed in the process of education. The simple observation could be made that the existence of these parental and student obligations have repercussions for those we are interested in. Thus, for example, compulsory attendance is the responsibility of parents over their children and of the students themselves during their school life (presence in class, discipline etc). The age at which this submission begins and its duration, along with demography – births, migratory fluctuations, infant mortality rates – makes up school demography, which both in terms of total enrolments and periodic surges, will have an impact on planning in terms of projected expenses and conditions for school mapping or the development of a regional training plan. Another example: a student's lack of discipline can lead to the administration making use of a disciplinary power which is strictly laid down by law.

Here, too, so that we need not return to this point, we must make it very clear that the careful application of the body of basic rules by those who are responsible for them, and the acceptance by parents, students, personnel and communities to submit to the consequences of their implementation presupposes the **legitimacy** of the decision-maker(s), as well as their **accountability**, and **impartiality**.

And we must explain too, that, while accurate, the presentation that follows is sometimes oversimplified. Thus, it is possible to identify rules that set aims and planning goals, those that fix objectives, and those that set out the principles of organization and action of authorities and the schools themselves.

Determining aims and goals

The examination of these rules leads to four questions, in the following order: who formulates and applies these rules? To whom do they apply? What is their content? How are they enforced?

The formulation of rules

According to the separation of powers, which derives from the Constitution, whether it exists in writing or not, of the country in question, the setting of objectives for the education system is the concern of the constituent assembly or the legislative power, or is a shared responsibility. Thus, the preamble to the French Constitution of 4 October 1958 stipulates that "the nation guarantees equal access of children and adults to education, professional training and culture" and that "the organization of public education, free and secular at all levels, is a responsibility of the state". Article 34 of the latter text specifies that "the law determines the fundamental principles...of teaching". Thus, educational aims are determined by legal provisions.

However, besides constitutional or legislative aims and goals, it is increasingly necessary to take into account international decisions.

The responsibility of belonging to the world community, as well as to one of the world regions exerts three kinds of pressure on states (with the exception of those rogue states which place themselves beyond the pale of international law). The first is the existence of **moral pressure**: belonging to a community of nations presupposes the adherence to certain ethical principles and codes of conduct and a system of values which governs the education sector. The second is the process of **conformity**, either voluntary or indirect, to the conditions laid down for obtaining financing from the World Bank or regional development banks (African Development Bank, International Development Bank). The third is the agreement to respect **declarations of rights** (universal or of the child), multilateral international conventions, or resolutions (UNESCO).

Outside of the provisions that were mentioned above concerning the rights of families and how their choices relate to the freedom of education, we would like to quote here paragraphs 1 and 2 of the Universal Declaration of Human Rights of 1948 which stipulate:

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

One can see the importance of determining aims in the second paragraph and that of educational choices in the first. Some principles and political means and techniques for furthering education are even more developed in the International Covenant on Economic, Social and Cultural Rights in its Article 13:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

To whom do the rules concerning aims and goals apply?

Those of an international legal order are binding, always through national procedures, on the constitutional authority, the legislative power, the government and administrators.

For the others, the order of authority for legislation gives first place to the Constitution, followed by the law. Since it is a question here of setting general aims and goals, the infra-legislative powers, especially governmental ones, are restricted to the prescribing of simple enforcement measures.

Content of the rules

When making a choice of aims for the education system, the competent political authority takes into account national history and future developments, as well as both individual and collective interests. This often means taking into account the diverse aspirations of the various social constituencies.

Differences in national political philosophies affect the expression of their aims, but much less than they would affect the choices for implementing them: for example on the relationship between school and equity or that between the social and the teaching functions of education. The international influence also explains this.

The objectives of the education system are both individual and collective. In the first case, it is possible to enrich personal development, access to culture, and integration into active life. In the second case, the education system can be credited with raising the level of qualifications, providing leaders for the Nation, and training good citizens.

The obligation of respecting the rules

This obligation exists. The determining of general aims and orientations is not merely academic.

The decisions concerned are primarily expressed as goals, or even ambitions. Failure to adhere to them can thus not be punished in the same way as rules prescribing the effective obligation to do something or not do it, which are the responsibility of administrative authorities. Ignorance of aims cannot be (and is not) punished by a judge through legal proceedings; only parliament could politically establish the existence of a government lapse in this area.

The pursuit of aims, incidentally, depends largely on the resources earmarked for the education system. There is in this a de facto moderating factor which should sometimes cool the ardour of lawmakers.

It should be noted here that if it is legitimate and necessary to define ambitions for the educational system, it is dangerous to expect too much of them. There is always the risk of giving priority to one aim among many, or of failing to pursue others, due to the impossibility of achieving all.

Determining objectives

Much more clear-cut than the setting of aims (often held to be declarations of principle of a political nature with a general validity of a somewhat hazy sort), objectives raise the problem of an administration's capacity to make choices. Educational planners must ask themselves how much confidence the public, teachers and users have in the objective-setting process. All objectives must be accepted as socially legitimate and sufficiently realistic.

The relationship between law, the setting of objectives, and the planning and administration functions is more complex than that between law and the setting of aims.

First of all, law can take the form either of an Act authorizing perennial expenditure, or a contractual law, expressing educational planning choices. It sanctions a certain political analysis and methodology that it renders operational, and contributes to imposing it on the administrator.

However, it can then happen that the intervention process is reversed: the legislator expresses political choices, and it is up to the planner and administrator to implement these choices. This could be the case, for example, for the decision to develop pre-schooling, or to raise the qualifications necessary to obtain a degree.

Given the above, the questions here are the same as those raised for determining objectives.

Setting objectives

Determining objectives is undertaken at various levels of the education system. The content and legal form of these decisions vary according to the level of responsibility. However, it is possible to set out some of them simply as follows.

The school, basically, sets itself objectives through its **project**. Further elaboration takes place using procedures drawing on advisory and decision-making authorities. However, the school imposes these objectives on itself. The legal status of the project is sometimes discussed.

Projected training plans in the French regions express regional objectives. They define the long-term training needs of the region in quantitative and qualitative terms. This setting of objectives can be done at infra-state levels for all education systems, either by a state representative working with devolved powers, or by the competent authorities of a decentralized authority.

Educational programmes set objectives discipline by discipline. The academic cycles are based on a setting of objectives. Legally speaking, this may take different forms, depending on the sharing of responsibility between the state, communities and schools mentioned above.

Finally, the government and the parliament (or one or the other) set objectives for the education system. Thus, for example, after the goals mentioned in its Article 1 – to contribute to equality of opportunity, to allow each individual to develop his or her personality, to improve the level of initial and ongoing training, to promote integration into both social and professional life, etc – the **law governing education** No. 89-486 of 10 July 1989 goes on to set genuine objectives in its Articles 2 and 3, for the nation, the state, and the educational system itself (i.e. for the public authorities responsible for it):

Article 2. Every child should be received, from the age of three, into a nursery or playschool nearest his or her home, if the family requests it.

This minimum age may be lowered to two, particularly in schools located in socially disadvantaged environments, whether in urban, rural or mountain areas.

Article 3. The nation sets itself the objective within a decade of graduating an entire age group with, at the very least, a vocational training certificate level or a technical school certificate, and 80% with a high-school diploma (*baccalauréat*).

All students who, after compulsory education, have not achieved a recognized level of education have the right to continue their studies so as to attain such a level. In the exercise of its duties, the state will organize the necessary means to prolong educational opportunities.

The setting of objectives amounts to inciting goals and ambitions; however, flexible planning systems take into account the fact that there can exist a discrepancy between what is wished for and what is achievable.

Content of the rules

This varies according to the level of involvement (state, infra-state, school) and the area of involvement (quantitative or qualitative objectives of the education system, objectives that include the general organization of studies, academic cycle objectives, and programme objectives).

National objectives are the most important in that they designate goals to be reached (given sufficient means). These goals can only be achieved by the concrete implementation of aims.

They can be quite diverse. For example, among them are the development of pre-schooling, higher enrolments, professional training, in-house training, reduction of regional disparities, resources for the physically challenged, the reduction and the elimination of illiteracy, and the support of initiatives in disadvantaged areas, etc.

The importance of these national objectives derives from their level of impact: they are vital for national planners and administrators who are responsible for implementing them, naturally; but they must also be respected by the infra-state planners whose plans cannot work contrary to national goals. They can adopt, develop, choose means of application, give preference to one or another choice, but not contradict them.

The regional objectives of regional policies can be just as important. In the case of France, a close scrutiny of the development of regional projected training plans shows the difficulty of striving to match training and employment, a relation which is difficult to define, and is based on schemes that can range from a simple summary of local aspirations to genuine planning.

The obligation of respecting objectives

This obligation can be explained differently depending on whether the school has drawn up objectives in its school project, or the region has set its own training objectives, or whether national objectives are being applied.

Respecting national objectives is imperative for state authorities within regional services (in contrast to centralized administrations), territorial authorities, schools, and personnel. The respect of educational programmes can be effectively enforced (through inspection, disciplinary powers). This is also true for the organizing of academic cycles and courses, adherence being assured through the appropriate means. However, even though objectives sometimes give a more precise and detailed expression of overall aims, this is not always the case. Here, the means of enforcing compliance will be evaluations, parliamentary review of the results of governmental and ministerial policy, a ministerial assessment of results achieved by the key players, schools and personnel.

Determining principles for organization and action

With these rules we are dealing with statutory provisions, most of which are subject to justice.

Legal obligations can ensue either from education law (or law concerning schools), or from other legal provisions, for example the law governing fundamental rights and freedoms (trade-union law, right of association, freedom of opinion, freedom of expression, etc) or that governing the public service (neutral status, affirmative action) or individuals (right to one's name, family law, parental responsibility, etc).

First, the knowledge, then the respect of specific provisions for education and more general provisions which are directly applicable, are a must for those responsible for planning and administration functions.

There is no question of covering all relevant provisions. Our explanation will concentrate on specific rules.

The drawing up and origin of rules

The role of international rules is what we will examine here. These are no doubt unevenly applied, depending on the resources that states have at their disposal, and on their political will. However, they are often respected, or are in the process of being so, except in those states that have chosen to remain outside of the international community.

Many of these pieces of legislation concern both the aims of the educational system on one hand, and its organization and operations on the other hand.

The Universal Declaration of Human Rights adopted on 10 December 1948 by the General Assembly of the United Nations prohibits in its Article 2, Paragraph 1 distinctions of "race, colour, sex, language, religion, political or other opinion, etc". It provides that everyone has the right "to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, etc" (Article 18). Article 26 especially, which was previously quoted, contains more precise information on the organization of education, in particular the right to education for all, the compulsory nature of elementary education, and the role of education in promoting respect, understanding and tolerance between peoples.

The Convention on the Rights of the Child signed in New York on 26 January 1990, also mentioned above, contains numerous provisions concerning education: the principle of *non-discrimination, the well-being of the child, rights recognized for children, freedom of expression*, thought, conscience and religion, *freedom of association, protection of privacy*, the responsibility of parents, right to education.

Apart from these rules of international import mentioned above, one could add those contained in agreements that concern a more restrictive geographical area, for example the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. The measures, which come under the internal legal systems of the signatory countries, are, according to rules laid down by national constitutional law, either laws or national regulations, i.e. applicable to the entire national territory, or non-national regulations, i.e. applicable to a portion of that territory only.

It is within this overall legal framework that planning and administration decisions are taken.

Content of the rules

The rules are sometimes **organizational** ones for the education system, and sometimes **operational** ones.

The first vary greatly from one national system to another, depending on history, and social and economic circumstances. The organization can be the result of previous planning: the initial creation of an education system, the setting up of a school network. However, most often, the organization predates planning decisions. Successive organizational choices concern the choice between neutral or secular state-run services, and a pluralistic public service; the role of private initiative; the general organization of the school system (primary schools, nurseries, secondary education, centres, etc), and finally the rules governing each.

Operating rules lay down the rights and duties of the central and educational services, schools, students, their parents, personnel. They therefore have a very direct impact on educational planning and administration.

Thus, the obligation to respect the principle of educational freedom has consequences on the estimated enrolments in the various kinds of schools and institutions. It can apply rules to transform education into a public service, and can have an influence on the curriculum. The fact that parents are compelled to send their children to school entails as a logical corollary the need to take in these children, something that financial resources do not always allow, thus creating in developing countries political risks due to the gap between what is **said** and what

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is **done**. It is therefore important to consider the age of the beginning of compulsory education, its length, and how this education is to be accomplished.

The content of courses, and the organizing of grades and diplomas, comprise another important area of involvement for law.

And this is also the case for everything that relates to student duties (the obligation to study, and to respect the rules of school life), to their rights (right of defence in the case of disciplinary procedure, the right of association, of assembly, of expression), and to the rights of parents – and sometimes students – within the system (right to information, participation, guidance, etc).

The 'rules' governing personnel – the word is not used here in its narrow and precise sense of public service law, but in the sense of legal status – is another area where numerous laws apply. These play a determining role in planning and administration. We have previously raised the problem of reconciling necessary measures to protect personnel, and those that allow the possibility of being able to deploy sufficient personnel where they are needed, in terms of numbers and qualifications.

The obligation of respecting the rules

Four legal principles govern this area.

The first is that the rule is supposed to be known by everyone and especially those who have the responsibility of applying it or respecting it. As with English common law, French law lays down that "ignorance of the law is no excuse".

The second is that faced with legislation – which is both known and understood – the planner or administrator is sometimes confronted with an **obligation** and sometimes with a **possibility**. The vocabulary used by the formulators of legislation makes a difference in all laws: the opposition between 'shall' and 'may', which is equivalent to 'duty' and 'right' in English, and that between what one 'must' and 'can' do in French, thus, choice.

The third is the application of the principle of legislative precedence, which obliges the author of all new, intended provisions to respect all provisions which are superior, in terms of their authorship and thus their nature. The respect of the constitution is incumbent on all legislators, in addition to government or ministerial laws and decisions, etc.

The fourth principle is that, apart from the problem of the verification of the constitutionality of laws, which is legally subject to various and often complex national solutions, judges often encounter actual illegalities. They can punish these either by declaring them void, or by imputing responsibility to the author of the offending act or of the administrative structure in whose name it was done.

VI. Legally determining planning and administration procedures

Logically speaking, the examination of how planning and administration procedures are legally determined could have – and maybe should have – for reasons of chronology, preceded the examination of the substantive rules. We did not choose to do so. Without wishing to underrate these procedures, it is evident that they are not as important as substantive rules.

The examination of **procedures** (taken here in the broad sense of the term) is nevertheless important since the rules in question can generate obligations for the competent authorities; be conducive or detrimental to the tasks which are their responsibility; provide protection for those subject to administration, and more citizens in general; and through the sound procedures binding on those responsible, be the guarantee of informed choice.

By procedures, we mean everything that precedes a decision, what is called the pre-decision-making phase, and by extension, the resolution of conflicts that can arise from decisions taken in the field of education.

After having presented the challenges that govern the adoption of rules of procedure, we will examine the rules themselves, then the problem of resolving conflicts.

The challenges

All issues concerning rules of procedure revolve around the search for a balance between the political concern of protecting those subject to administration and citizens in general, as well as of sound management, on one hand; and, on the other, the need of not paralyzing the administration, but on the contrary allowing it to make decisions efficiently, and if needs be quickly.

This balance is defined by the law, sometimes based on custom law, and its respect is imposed by the judge.

If one considers that the substantive rule must, in the interest of the education system, be a barrier against favouritism – political, clan, ethnic, social or plutocratic – and nepotism, it is important that not only the rules of the game be clear, but that the rules of procedure make their own contribution to transparency. Only this can allow one to assert that the choices are objective, and to make sure that they are so in reality. This implies, in various ways, that information exists concerning projects, information about the criteria for choice, information about consequences and risks inherent in choices. Democracy demands clarity concerning education and education-related projects, whether it is situated at the top (parliament) or at the base (school principal). In absolute terms, democracy grows with the development of transparency. This can moreover contribute to the acceptance of goals and projects.

However, information achieves only partial democratization. A more advanced form of it implies administrative democratization through active participation. We speak of administrative democratization based on the assumption that at the national level the parliamentary system aspires to information-sharing – at least partially – and also to participation through the mandate accorded to those elected as representatives. Aspiring to know about projected choices and to be involved in the discussion of these and the final choices made is thus well placed at an infra-state level, through the development of substantive rules, or through the determining of how these can be applied, or through enforcement decisions.

If one leaves the political arena to descend to the more modest level of techniques for drawing up measures for administration/ planning, the interest of information and participation is no longer simply to satisfy aspirations for administrative democratization. More technical in nature, it allows decision-makers not only to avoid obstacles to implementation that would be generated by misunderstandings (eliminated by communication/information), but even more to shed light on their decisions, and to challenge them with other ideas, experience and judgements. No doubt this presupposes the renouncing of a 'top-down' style of administration, with the representative of public authority holding the reins of power. This also presupposes the giving up of secrecy as a protection during the development phase, secrecy which is justified as a way of avoiding the involvement of pressure groups or administrative sabotage. Countries of the Latin tradition, which are more imbued with the culture of sovereignty – of the Imperium – are more reticent about moving in this direction than those of the Anglo-Saxon tradition. However, the importance of educational choices, from the highest to most modest ones, in their impact on individuals, families, society, and based on permanent arbitration among the various and often contradictory interests (the state, communities, families, churches, schools of thought, economic forces, political groups, representatives of cultural or ethnic groups) cannot permit authoritarianism, arbitrary decision-making, and, even less, irresponsibility and incompetence.

However, no matter how urgent the reasons for taking into account the desire for information and participation, the risks that they create cannot be neglected. First of all, the risk of encumbering the decision-making process, and thus slowing it down. Then, something more serious, the risk of seeing decision-makers play a waiting game so as to be left in peace. And finally, the risk of seeing a de facto attrition of power, the legal holder finding itself dispossessed because of obedience to so-called 'experts' and other individuals. Now, if there exists a justification for political power – for planning and administration in the world of education – it is certainly to embody the general good and to decide among various and sometimes contradictory interests and aspirations. To abandon decision-making to a group, or a coalition of groups, is unacceptable both politically and for the school itself.

All of this shows the importance of determining through law the rules of procedure, as we have defined them, and also seeing that these are respected, in the same way that the substantive rules are respected according to their areas of jurisdiction or the obligations they prescribe. However, what are these rules of procedure?

The rules of procedure for planning and administration

It is possible to group these rules around the three main areas of operation that are their prime concern. Although this is somewhat arbitrary, it serves to show the main thrusts of national education laws.

The first group includes rules whose main function is to protect the student, the family, personnel, etc. Rules of this group concern primarily educational administration.

The second group consists of rules whose main function is to clarify the decision-making undertaken by the competent authority. Here we find ourselves, first of all, in the area of planning, and secondly in that of administration. Procedures are already moving here towards an administrative democratization.

The third group comprises rules whose main aim is to develop the participatory process itself. They are the point of leverage between consultative collegiality and the collective organization of decision-making itself.

Protection of persons

According to fairly similar legal provisions, because inspired by the same basic concern, rules for the protection of individuals deal with, on one hand, the personnel working within the education system, and on the other, the general population and users of the education system.

For the first group, the rules no doubt vary according to the legal nature of the link between the employee and the school. However, this is less of a determining factor than is sometimes implied. Indeed, it is here a question of guaranteeing objectivity in the procedures that lead to choices between persons – deployment, evaluation, promotions – or to decisions affecting individuals – the assigning of responsibilities, disciplinary measures, firing. Of course, according to the lack or oversupply of teachers, these guarantees can increase or decrease –

in the same way as salaries. However, at any stage, whether one applies or not a civil-service law – which is, incidentally, often specially adapted to teachers – the basic problem is the balance between recognized guarantees and service concerns. Thus, for initial assignments or transfers, it has become difficult in developed countries to fill positions in rural or certain urban areas (suburbs), and the same difficulty is experienced in developing countries for the outskirts of large urban conglomerations marked by poverty, distant rural areas, or insecure regions, e.g. war zones. The rules governing personnel – beyond social and sometimes cultural aspects – can also be affected by this difficulty. For example, it appears wise and easy to lay down the principle that the first stages of learning and the reduction of academic failure presupposes the assignment of the best teachers to tough schools and classes, or for students in difficulty… However, individual and collective behaviour must also be taken into account. And thus one sees countries taking a de facto decision which is quite the opposite, without measuring the financial and human consequences (in terms of drop-out rates, repetition, overcrowded classrooms, etc).

For students and parents, three preliminary observations are necessary. The first is that the decision-making areas governing guarantees – that either already exist or are to come into existence – are, and this is perfectly logical, the same for all school systems. Here, it is a matter of:

- **access** to the school system or, if this is assured, access to its diverse elements (secondary education, university), or when this is possible, access to a specific component (a particular university and not just university in general) or a particular kind of training;
- **guidance** during the education process;
- **the granting of social incentives** favouring education (bursaries, free transportation, canteens, allowances for uniforms or the acquisition of tools, the provision or loan of books);
- **evaluation**, leading to a degree or certificate;
- student **discipline.**

The second observation is that, although one may find a number of differences in the existing national legal systems, the main rules are quite similar. In short, there exists very intense international pressure which can bring about the introduction of these rules where they do not exist, or their modification where they do exist, but are either insufficient or poorly applied. This pressure is due first of all to the international environment, a sort of moral coercion which comes from belonging to the community of nations or the desire of not being denounced and singled out for attention – although, in cases like these, one can hardly set in motion disciplinary measures or withhold funds from development banks. Then, there are the international legal measures, especially on the rights of the child. Having said this, we will simply list the rules: the dissemination of the general rules to be applied to the various situations mentioned above; the motivation of individual decisions based on them; the indication of means of obtaining redress; the communication of grievances; the respect of due process; procedures for legal advice and assistance; inspection of documents. Information on existing rules and what they entail is especially necessary here. Since the area is not a concern of school planning but rather administration, the decisions are numerous and concern very diverse, and often minor, matters within the educational administrative machinery, particularly that of institutions and schools (student guidance, evaluation of results obtained, disciplinary measures, assignment to a class, etc).

Information for decision-makers

Every decision, whoever the decision-maker, must be based on a complete and precise analysis which takes into consideration the means of application and shows subsequent foreseeable and continuing consequences.

For a national plan, in a democratic system, this analysis is first and foremost the concern of parliament, but also that of the government and the minister in charge of education. The latter is responsible to the head of the government: on one hand, it is his or her job to present propositions to the government or parliament, according to their area of responsibility, and on the other hand, to make decisions which come under the minister of education. The parliamentary debates and discussion within the cabinet combine the technical aspect of analysis with the political aspect in terms of society and the risk of public outcry, etc. One must not expect more from these debates than they can provide: the subsequent observation of the existence of negative effects generated by benevolent measures must not be excluded. To reduce this risk, it is necessary that technical planning and administrative authorities provide national decision-makers with the necessary information, and that it is complete, accurate and conducive to simulations or comparisons using forecasts or prognosticative measures.

To do this, and also for their own interests, the planner and administrator need to be informed themselves, to measure the foreseeable reactions, and to anticipate consequences. Indeed, they are not simple mouthpieces for higher authorities. They are often decision-makers themselves. Consultation is thus justified at their level to sway public opinion and to convince civil society that the quantitative and qualitative development of the overall education sector – including training in the broad sense – is a top priority, as well as to gain acceptance of the fundamental ways and means needed to achieve.

To illustrate this, an analysis of the important role of consultation in the French education system produces the following chain of events:

- work to prepare a national plan via commissions which are more often than not real centres for meeting and discussion, made up of representatives from economical, social, and educational sectors, as well as specialists in education problems – these commissions hear various experts (sociologists, economists, specialists in education sciences), and write a report whose results will, to various degrees, eventually influence government choices over several years;
- involvement at ministerial level of a national education council which is consulted on the most important legislation;
- involvement at the same level of professional advisory commissions which, according to the professional sector or branch, make proposals on the creation, modification or suppression of technological and vocational training programmes;
- involvement of a national council for curriculum;

- involvement of legal authorities in determining the regulations applicable to personnel and sometimes to their management;
- consultation by state regional services, or by the region itself, according to jurisdiction, of a regional consultative authority, namely to develop a projected regional training plan, a long-term investment programme and academic measures in terms of school mapping;
- consultation of an authority similar to the above in both composition and responsibility, at the level of each *département*;
- existence of advisory authorities for secondary schools (board of directors, permanent commission, student council, teachers' council, commissions on hygiene and security, classroom councils) and primary schools (school council, teachers' council) – these authorities sometimes have real decision-making power and, in that case, are no longer mere advisors.

For overall advisory roles, it is evident that national solutions can differ and effectively do differ significantly in how they are set up. All the same, they must all generate decisions in keeping with common concerns.

The first is that – unless it is decided not to retain this or that group, either because it is not representative or due to a political choice not to take into account this or that group or social entity – informal and formal consultations must take into account families, local elected representatives, personnel, and economic players.

The second is that, sometimes for political reasons in the strict sense of the term, and sometimes for technical reasons, which depend on the importance of the subject, the law organizes consultation on the basis of a range of choices: to decide and inform; to decide then persuade in order to gain acceptance; to define a problem and or solution(s) and submit definitions for analysis, commentary and suggestions; to define a problem and call for solutions to be found which do not just spring from the initiative of the questioner, but also from the consultant.

The third concern is that the legal consequences must be extremely clear – at least in their principles. If there is an obligation to seek advice, the absence of consultation renders the decision illegal. If the consultation is done by authorities who are not chosen according to the rules or who meet illegally, the consultation is null and void. If the consultation by the competent authority does not treat the subject-matter of the decision, or at least its main aspects, the consultation is also null and void. If the law prescribes adherence to the opinion rendered – the rare 'with the approval of' procedure – the disregard of the latter entails the illegality of the decision.

Although national laws differ in their common basis and application, there seems to be a general trend towards developing the process of consultation, either to bring about the reduction of state powers, or to promote decentralization or the growth of school autonomy, or to democratize educational administration … a trend which eventually leads to participation in the decision-making process itself.

Participation in decision-making

With participation in the decision-making process, we are in fact moving from the preparatory procedure of a planning or administration decision by decision-maker A to a transfer of the entire responsibility to decision-maker B. This solution is only mentioned as the ultimate phase of change, the moment when one moves from consultation to a transfer of power in the framework of an associative form of decision-making. This is an instrument of decentralization and the passage mentioned is a path toward decentralization. It can be used either for developing or promoting decentralization on a territorial basis for autonomous communities, or for developing or promoting what is sometimes referred to as technical decentralization, in order to increase the autonomous authority of a school.

Law sanctions the first form of decentralization so as to reduce the power of the state in the face of the development of an education system whose size makes it unwieldy for a central authority, or to get partners more intensely involved in education for political or financial reasons (to obtain resources). The authorities relinquishing jurisdiction can retain a power of control, at least for a certain period.

The sanctioning by law of the second form increasingly corresponds to two kinds of initiatives, which, moreover, can be intermingled. One is to grant schools decision-making power – outright or developed on an existing basis – to allow them to adapt their pedagogical choices, or to develop their own strategy. The other, which is more of a policy concern, is to allow a certain latitude in the educational policies of various schools so as to take into account their different school-going populations: social origins, ethnic differences, etc.

Increasing all of these local powers inevitably raises the problem – and in new terms – of how to resolve conflicts resulting from contested choices or the implementation of these choices.

The resolution of conflicts

Two situations require the drawing up of legal procedures for settling conflict. The first concerns internal relations within the education system, among competent authorities. The second regards relations with general citizens and users of educational services.

Prevention and settlement of 'internal' conflicts

Legally speaking (politically it is otherwise), no problem can exist in the relations between the government and the parliament, or between the ministry and the government or parliament.

In the first case, parliament always has the last word. However, it has it only within its own jurisdiction which can be reduced to the statement of fundamental principles, which is the case in France.

In the second case, the ministerial choice is simple: either to convince, or failing this, to acquiesce or resign.

The problem of settling conflicts or, better still, of preventing them, can be reduced to two situations: on one hand, the relations between the central administration and local state services; and, on the other, the relations between the state and territorial authorities.

In the first case, the overriding authority to direct and control ensures unity in the overall educational administration. It makes it possible to provide a framework for the actions of subordinate authorities by **instructions** which go under various names: decrees, directives, office circulars, letters, etc. It authorizes the **monitoring** of the activities of subordinates. It consists of the right of a superior authority to take measures in the place of, and on behalf of, a subordinate authority from the start, or to substitute a decision for another one judged to be inexpedient or illegal, including appeals from members of the population. It is evident that the framework for action contributes to defining the limits of 'technical decentralization', school autonomy, and the devolved powers granted to state representatives. **From this point on, a balance must be found between the interventions needed to guide, lead, incite, and explain, and a burdensome framework (too many or overly complex regulations, laws which 'dictate' solutions and attitudes), which obstructs and paralyzes.**

The problems of relations with territorial authorities is considered under other legal standpoints because the existence of these authorities and their powers are legally protected. Two prime means of 'control' exist concerning autonomous powers, but not independent ones. The first is the existence of administrative supervision exercised in keeping with the status of the authorities, the nature of the transactions, the basic political choices concerning the nature and extent of decentralization: by submitting the administrative acts to preliminary approval, possible nullification or substitution. The second, which is the expression of a much more decentralizing approach, is that distant state authorities have recourse to the legal channels of general law: they can lodge an appeal with a judge for a disputed decision, just as a private citizen would do. Here again, the legal choices available allow one to specify the real impact of decentralization and – a point of view which is less scientific and more practical – make it possible to adjust the limits of authority which are of a variable nature, so as to reflect the size of the education system (volume of 'business' to be dealt with), the culture involved, national traditions, political goals for the future.

More general forms of prevention and settling of conflicts

The first forms of prevention comprise all of the rules for non-contentious administrative proceedings mentioned above: information, communication of grievances, respect of the right to a fair hearing.

However, besides these, legal procedures exist which, without belonging exclusively to the world of education (since they come within general administrative law), can be and are effectively used by all citizens.

The first is the possibility of asking for an **out-of-court settlement** by applying to the same authority to reconsider its decision, based on inexpediency or illegality; or, on the basis of the same reasons, to make a **disciplinary complaint** by applying to a higher administrative authority to review the contested decision.

The second is **recourse to the courts**. It does not matter here if the judicial system is unique or comprises two types of courts, one of which deals with administrative cases. **Two avenues of action exist: one is the action of rendering the administration liable, the other of disputing the legality of decisions.**

It is not our task to deal here with the problems of responsibility in their entirety. Considered under the angle of their legal effects for planners and administrators, the rules cover three situations which entail legal consequences. The first is that in which liability is incurred because an illegal act has generated damage or injury. There is nothing particularly special about the educational sector, aside from the forms that these situations take: illegal refusal of enrolment, illegal suspension, illegal withholding of a diploma, etc. The second situation is that of consequences due to poorly run education services, causing harm to students: here it essentially concerns problems of supervising children and adolescents liable to be either the victims or the perpetrators of harm. The third situation is that in which damage to persons or property originates in poor construction, bad maintenance, or the improper use of school buildings. To avoid the two last situations, school law must include protective rules. These are of the utmost importance to planners and administrators in the way they are enacted and applied: conditions

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governing training, supervision and access to dangerous materials, construction regulations, building security regulations (risk prevention, emergency drills, etc).

Action based on grounds of illegality have this in common with liability procedures: they are applied to the educational sector, but are not exclusive to it.

They are effective for imposing respect for the law (in the broad sense) upon the system. They can be even more so if the administrator holds the judge in high esteem, and strives to avoid a negative court decision. However, the scope of recourse to contemplated legal action is often reduced by reservations on the part of general citizens, either by the fear of administrative 'reprisals', or because of the fact that cumbersome procedures, inherent in all litigation, postpone the long-awaited moment for a legal decision. It should be noted concerning contentious proceedings about legality – and also about responsibility – that there is the problem of defining the judge's role in determining the obligations which fall upon administrators and planners. The place of disputation in the framework of common law is well-known. However, in reality, even outside of the case of Anglo-Saxon law, previous decisions can also largely contribute to determining applicable legislation. To give just a few examples, in France, the role of the Council of State as the highest administrative court was a determining factor on issues as delicate as the granting of contracts to private schools, the possibility for territorial authorities to financially assist these same schools, the exercise of student rights, the disciplinary rules which apply to them, etc.

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Conclusion

By way of conclusion, it is perhaps sufficient to underscore the importance of law in the process of planning and administration within the school system. It can be an important tool for implementation and a real instrument for educational policy, or a prime means of enforcing compliance.

This presupposes that particular attention be paid to rules, in both their formulation and their application.

There was no question in this very brief monograph of covering all aspects of how law applies to educational planning. All the same, we cannot afford to ignore one of the major problems in planning. Planning can only be conceived and implemented, practically speaking, if legislation and, above all, administrative practices follow it up in one important area: evaluation. A real commitment to evaluation is necessary, i.e. an evaluation of public policy which focuses both on comparing aimed-for objectives with actual accomplishments, and on a constant assessment of the educational, social and economic effects of the educational policies in place.

The law is particularly important socially in that rules often take the form of arbitration between opposing interests. At the same time, it has the mission, which is not the least of its concerns, to be the guarantor of the efficiency of an educational system which, in turn, must provide the ways and means for transmitting collective social values, and be the prime agent of change in developing the world of tomorrow.

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The booklet

The law provides planners with a set of instruments for organizing educational activities, developing and implementing reform policy, and facilitating co-operation between the various groups within the system.
This study analyzes the essential aspects of the relationship between planning and law, and thus familiarizes education specialists with the tools needed to understand legal administration rules for school systems. Several topical themes, such as decentralization, are looked at in particular detail.
The author intentionally draws on examples from countries operating under statute law, and thus complements Ian Birch's 'Law and educational planning' (Fundamentals No. 46), more oriented towards the common law tradition. Yet, despite the fact that every educational system is intrinsically linked to its country's history, culture, and socio-economic environment, the monograph shows that the legal definitions of the various elements that make up the school system are based on educational issues with which most public authorities are faced.

The author

Claude Durand-Prinborgne is Professor Emeritus of Public Law, University of Paris I Panthéon-Sorbonne. He has held high-level responsibilities within the French Ministry of Education, including the position of General Director of Schools. He has worked with several international organizations as a specialist on questions of administrative reform, law, and the financing of education in various African and Eastern European countries. In addition to being editor of the review Savoir, he has written numerous works on the French school system.

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